

PROJECT HISTORY - 2020

HEALTH MAINTENANCE ORGANIZATION MODEL ACT (#430)

1. Description of the Project, Issues Addressed, etc.

In May 2018, the Health Insurance and Managed Care (B) Committee received a referral from the Receivership and Insolvency (E) Task Force. The Task Force requested the Committee to review all NAIC models involving health maintenance organizations (HMOs) to determine if conforming changes are needed to provide options for the states that have adopted or are adopting the 2017 revisions to the *Life and Health Insurance Guaranty Association Model Act* (#520), which added HMOs as members of the life and health insurance guaranty association.

In June 2018, the Committee decided to accept the referral from Receivership and Insolvency (E) Task Force to review relevant HMO NAIC models to determine if revisions need to be made for consistency with the 2017 revisions to Model #520. The Committee directed the Regulatory Framework (B) Task Force to conduct this review and report back to the Committee with any recommendations. At the 2018 Summer National Meeting, the Regulatory Framework (B) Task Force formed a new subgroup, the Health Maintenance Organization (HMO) Issues (B) Subgroup, to carry out this work. Kentucky volunteered to chair the Subgroup.

To assist the Subgroup in carrying out its work, NAIC staff reviewed several NAIC models having the most potential for being affected by the Model #520 revisions, including the *Health Maintenance Organization Model Act* (#430). NAIC staff recommended that the Subgroup review the following Model #430 provisions to develop its recommendations to the Committee regarding any potential revisions because of the Model #520 revisions:

- Section 3—Definitions, specifically the definition of “uncovered expenditures” in Section 3HH.
- Section 5—Establishment of Health Maintenance Organizations, specifically the provisions in Option B: Section 5B(16).
- Section 14—Continuation of Benefits.
- Section 18—Deposit Requirements.
- Section 19—Hold Harmless Provision Requirements for Covered Persons.
- Section 20—Uncovered Expenditures Deposit.
- Section 21—Open Enrollment and Replacement Coverage in Event of Insolvency.
- Section 31—Rehabilitation, Liquidation or Conservation of Health Maintenance Organizations.

The Subgroup met Oct. 18, 2018, and Nov. 1, 2018, via conference call to discuss whether it was necessary to revise Model #430 and if so, the scope of the potential revisions, such as revising Model #430 narrowly to address any inconsistencies with the revised Model #520 or revising Model #430 more broadly to include other revisions not related to the revised Model #520. The Subgroup recommended to the Regulatory Framework (B) Task Force that Model #430 be opened for revision, but the Subgroup decided to defer to the Task Force the scope of the revisions.

The Regulatory Framework (B) Task Force presented the Subgroup’s recommendation to the Committee. The Committee accepted the Task Force’s recommendation to open Model #430 to address any conflicts and inconsistencies with the 2017 revisions to Model #520 during its Feb. 14, 2019, meeting. During its Feb. 26, 2019, meeting, the Task Force directed the Subgroup to move forward with developing and adopting a 2019 charge to revise Model #430 and pursue adoption of a Request for NAIC Model Law Development to revise Model #430. Virginia volunteered to chair the Subgroup to complete its work to revise Model #430 to address any conflicts and inconsistencies with the 2017 revisions to Model #520.

During its April 29, 2019, meeting, the Subgroup adopted its 2019 charge to revise Model #430 to revise provisions in Model #430 to address conflicts and redundancies with the provisions in Model #520. The Subgroup also developed a Request for NAIC Model Law Development to revise Model #430 consistent with its charge. The Regulatory Framework (B) Task Force adopted the Subgroup’s 2019 charge and its Request for NAIC Model Law Development May 15, 2019. The Committee adopted the Task Force’s 2019 revised charges and the Request for NAIC Model Law Development in June 2019. The Executive (EX) Committee adopted the Request for NAIC Model Law Development at the 2019 Summer National Meeting.

The Subgroup met May 16, 2019, and June 24, 2019 via conference call to discuss its next steps for moving forward while waiting for adoption of its Request for NAIC Model Law Development. The Subgroup requested comments from stakeholders. The Subgroup met Sept. 16, 2019, and Nov. 21, 2019, via conference call to discuss proposals from the Virginia Insurance Bureau and the Maine Department of Insurance (DOI) for revising Model #430 consistent with its charge. The Subgroup decided to use the Maine DOI approach.

In late December 2019, the Subgroup exposed a draft for a public comment period ending March 18, 2020. The Subgroup discussed the comments received on the draft June 11, 2020, via conference call. The Subgroup decided to accept some of the suggested revisions and exposed a revised draft for comment. The Subgroup adopted the revised draft July 13, 2020, via conference call. The Regulatory Framework (B) Task Force adopted the proposed revisions to Model #430 Sept. 24, 2020, via conference call. The Committee adopted the revisions Nov. 2, 2020, via conference call.

The revisions delete several provisions in Model #430 to reconcile it with the 2017 revisions to Model #520. The deleted provisions include Section 14—Continuation of Benefits, Section 20—Uncovered Expenditures Deposit and Section 3HH, the definition of “uncovered expenditures.” For states that do not intend to adopt the 2017 revisions to Model #520, for reference, a new appendix to the model includes these deleted provisions. The Subgroup also deleted Section 21—Open Enrollment and Replacement Coverage in the Event of Insolvency because the section’s provisions are obsolete due to the federal Affordable Care Act (ACA).

2. Name of Group Responsible for Drafting the Model and States Participating

The Health Maintenance Organization (HMO) Issues (B) Subgroup of the Regulatory Framework (B) Task Force drafted the proposed revisions to Model #430. The members of the Subgroup were: Colorado, Florida, Illinois, Kentucky, Maine, Missouri, Nebraska, Virginia, Washington, West Virginia and Wisconsin. Kentucky chaired the Subgroup in 2018. Virginia chaired the group in 2019 and 2020.

3. Project Authorized by What Charge and Date First Given to the Group

The Regulatory Framework (B) Task Force established the Health Maintenance Organization (HMO) Issues (B) Subgroup in 2019 to carry out the charge below:

“Revise provisions in the *Health Maintenance Organization Model Act* (#430) to address conflicts and redundancies with provisions in the *Life and Health Insurance Guaranty Association Model Act* (#520).”

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc.; include any parties outside the members that participated)

Beginning in March 2019 and ending in July 2020, the Subgroup reviewed and discussed all the comments received. Numerous interested parties participated in the drafting process. The interested parties represented all stakeholder groups, including consumers, insurers and guaranty association representatives. Each draft of proposed revisions was posted to the Subgroup’s web page on the NAIC website. All comment letters received also were posted. The Subgroup met via conference call in open meetings throughout the drafting process.

5. A General Description of the Due Process (e.g., exposure periods, public hearings or any other means by which widespread input from industry, consumers and legislators was solicited)

Beginning in March 2019 and ending in July 2020, the Subgroup reviewed and discussed all the comments received. Numerous interested parties participated in the drafting process. The interested parties represented all stakeholder groups, including consumers, insurers and guaranty association representatives. Each draft of proposed revisions was posted to the Subgroup’s web page on the NAIC website. All comment letters received also were posted. The Subgroup met via conference call in open meetings throughout the drafting process.

6. A Discussion of the Significant Issues (items of some controversy raised during the drafting process and the group's response)

There were no significant items of controversy raised during the drafting process. However, the Subgroup extensively discussed what approach to take to revising Model #430 given that some states will not adopt the 2017 revisions to Model #520 and preserving those sections removed from Model #430 for those states. The Subgroup considered a few options, including: 1) retaining the sections that needed to be deleted to reconcile Model #430 with Model #520 and add explanatory drafting notes; or 2) deleting the necessary sections and adding explanatory drafting notes. The Subgroup decided the best approach to address this issue was to delete the section and include the deleted sections in a new appendix to Model #430.

7. Any Other Important Information (e.g., amending an accreditation standard).

None.

PROJECT HISTORY - 2003

HEALTH MAINTENANCE ORGANIZATION MODEL ACT (#430)

1. Description of the project, issues addressed, etc.

This model act was revised to take into account changes in the marketplace since the Health Maintenance Organization Model Act was adopted by the NAIC in 1984. Revisions were made to the existing reporting requirements and solvency provisions in the model act. The model act was revised to reference other existing NAIC model acts where appropriate, rather than include duplicate sections. In addition, a new section was added for the registration of downstream risk arrangements.

2. Name of group responsible for draft the model:

Managed Care Organization Working Group of the Regulatory Framework (B) Task Force.

States Participating:

Kathy Greenlee, Chair	Kansas
Kenney Shipley	Florida
Joan Krosch	Idaho
Bill McAndrew	Illinois
Richard O'Shee	Louisiana
Manuel Montelongo	Nebraska
Alexander Feldvebel	New Hampshire
Ed Unger	New Jersey
Guy Perkins	Nevada
Barbara Morales Burke	North Carolina
David Fogarty	Ohio
Randy Moses	South Dakota
Fred Nepple	Wisconsin
Bob Wright	Virginia

3. Project authorized by what charge and date first given to the group:

The Special Ad Hoc Committee on HMO Insolvency (HMO Insolvency Committee), formed at the 1999 Summer National Meeting, had its final meeting at the 1999 Winter National Meeting. The charge of the HMO Insolvency Committee was to evaluate the adequacy of current solvency and consumer protection measures with regard to managed care organizations. The HMO Insolvency Committee was intended to be short-lived, and the final recommendations included suggesting charges for the Health Insurance and Managed Care (B) Committee related to consumer protection and managed care solvency.

At the 1999 Winter National Meeting, the B Committee delegated the task of revising the HMO Model Act to the Regulatory Framework Task Force and the task force formed the Managed Care Organization Working Group. The following charges were given to the Managed Care Organization Working Group:

Study the issue of risk sharing arrangements and the implications of downstream risk assumption in particular, including the effects of an insolvency of an entity assuming downstream risk. Make recommendations as appropriate. Report by Winter 2001 National Meeting.

Update and revise the Health Maintenance Organization Model Act as appropriate, paying particular attention to strengthening solvency standards and insolvency protections for managed care organizations. Report by Winter National Meeting.

4. A general description of the drafting process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.

The revisions were drafted by the working group. Numerous interested parties participated, including industry representatives, such as the American Association of Health Plans (AAHP), the Health Insurance Association of America (HIAA), the Blue Cross and Blue Shield Association (BCBSA), the EOSHealth. Inc., Kaiser Permanente, and the Group

Health Cooperative of Puget Sound, and consumer representatives, such as AARP, National Partnership for Women and Families; and other interested parties, such as the National Committee for Quality Assurance (NCQA) and the federal government through the Centers for Medicare and Medicaid Services (CMS).

5. A general description of the due process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited).

There have been more than fifteen drafts of revisions to the model since the project began in 2000. Each draft was circulated for comment to interested parties prior to discuss at NAIC quarterly meetings. In addition, all drafts of the proposed model were posted on the NAIC web site. Throughout the drafting process comments from various interest groups and organizations were received and discussed by the working group.

6. A discussion of the significant issues (items of some controversy) raised during the due process and the group's response.

The most significant issue that arose during the drafting of revisions to the model act concerned the extent to which the model should regulate entities assuming downstream risk. The working group heard presentations on the issue, reviewed how other states have addressed the issue, and consulted the National Association of Managed Care Regulators White Paper on Downstream Risk. The working group decided not to license risk bearing entities, but to create a registration requirement, placing the responsibility for monitoring the continuing financial health of the risk bearing entity on the health maintenance organization. The model act includes requirements for the exchange of information among the health maintenance organization, the risk bearing entity and the regulator.

Another significant issue that arose during the drafting of revisions to the model act concerned whether it was appropriate to exempt staff and group model HMOs from the requirements on downstream risk. Because there is mutual exclusivity between a provider group and the health plan in group and staff model HMOs, the financial health of both are deeply intertwined. Several states and the Health Organizations Risk Based Capital (HORBC) Model Act contemplate special treatment for these Kaiser-type plans. The working group agreed to include an exemption for entities similar to that contained the HORBC Model Act.

7. Any other important information (e.g., amending an accreditation standard).

None.