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Overview

- Background – State-based Guaranty Association system
- Rationale for 2017 amendments to NAIC Life/Health Guaranty Association Model Act
- NAIC Receivership Model Law Working Group actions
- Overview of key changes to the Model Act
- Current legislative developments
What is a guaranty association?
- State-based and uniform across the country
- Administered to protect policyholders in event of insolvency
- Generally only protects policyholders of companies that are members and only policyholders that are state residents

Who runs the guaranty association?
- All states and DC have a GA
- Membership is made up of eligible insurance companies selling covered insurance products
- Generally does *not* cover HMOs in most states
- Governed by a board of directors made up of representatives of members companies
Where did the GAs come from?
- GA legislation developed in the late 1970’s and spread across the country; by 1990’s all states and DC had adopted, based on NAIC models
- Impetus was to strengthen the state-based system to better provide critical policyholder protections
- Do not want a system like FDIC

How are GAs funded?
- Directly from participating insurers up to a specific premium cap, generally 2% of written premiums annually
- Those insurers are assessed to provide policyholder protection in the event of an insolvency and ensure their claims are paid
- HMOs that are not members of GAs do not have policyholder protections in the event of insolvency and no mechanism for claims payments
Why do insurance insolvencies happen?

- For many reasons, some beyond the company’s control. Market shifts, too-rapid growth, inadequate rates, insurance fraud, mismanagement and as with many of the Co-Ops, because the federal government did not provide the promised funding
- While companies are required to have adequate surplus, this cannot always prevent an insolvency

What happens when the insolvency occurs?

- The commissioner will ask a court to place the company into receivership and at some point, liquidation
- The GA then steps in to ensure that consumers continue to have access to their networks by ensuring that providers are paid, up to the statutory per-person limit (usually between $300,000 – $500,000)
Co-Ops, Colorado and Penn Treaty: a perfect storm

- Beginning in March, 2015, the Co-Ops, created by the ACA to be consumer owned and operated insurers began to fail
- Approximately 27 Co-Ops licensed. Today only five remain
- Many were GA members and so had claims covered by other members. Those licensed as HMOs did not get coverage for consumers
- Co-Op in Colorado placed in liquidation in January 2016
- Looming insolvency not only for the Co-Op but also for Penn Treaty
- Stakeholder meetings in Colorado to discuss potential destabilization of guaranty association system without ability to spread risk for health carriers more broadly
- Health carriers responsible for LTC insolvency in Penn Treaty, even though not writing
  - Almost $3B, discounted, $4.8B undiscounted liabilities for PT
  - Created significant hardships for health industry and consumers
Most insurers, both life and health, have never sold LTC

Currently, less than 15 insurance groups sell stand-alone LTC

Increased writings of life and annuity hybrids (24% of total LTC and 85% of new sales)
  - Legacy LTC blocks, however, will continue to cause problems for decades
LTC Premiums vs Assessments by LOB

<table>
<thead>
<tr>
<th>Category</th>
<th>Premiums</th>
<th>Assessments</th>
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<tbody>
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<td>Life</td>
<td>33.5%</td>
<td>6.50%</td>
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<tr>
<td>Annuity</td>
<td>17.8%</td>
<td>4.20%</td>
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<tr>
<td>LTCi</td>
<td>27...</td>
<td>1.10%</td>
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<tr>
<td>Health</td>
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<td>76.20%</td>
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<tr>
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Penn Treaty – 9 years of litigation

Colorado – full year of stakeholder meetings
  ◦ Asked life and health representatives to develop a solution
  ◦ Intense 1:1 negotiations

Consensus solution to stabilize GA system and prevent potential federal intervention
  ◦ Life insurers to accept 50% of risk of future LTC insolvency
  ◦ HMOs be included to provide GA coverage for HMO policyholders
Working Group, led by Texas and Washington, initially tasked to evaluate the changing market place of LTC products and the potential guaranty fund impact

Evaluate the need for amendments to the NAIC Life and Health Insurance Guaranty Association Model Act to address issues related to the insolvency of LTC insurers

Result of that evaluation: agreement to revise model to stabilize overall system and protect consumers
Primary concerns:
- Overall stabilization of state-based system
- Sufficiency of assessment base
- HMO consumer protections
- Long-term care insolvency assessments
- How to handle long-term care insolvencies:
  - Rate increases
  - Benefit modifications

- Many conference calls/meetings to discuss
- Ultimate agreement to proceed to do two things:
  - Include HMOs as guaranty association members to provide GA coverage
  - Split the LTC assessments for any future insolvencies between life and health accounts
Working Group formed Drafting Group led by Colorado and Washington

Open to all interested participants

12 states and 35 interested parties participated, including:

- Insurers
- Trade groups
- HMOs
- Provider groups
- Special Deputy Receivers
- GAs
- Academics
- Consumer representatives
Key Areas of Amendments

- Adds HMOs as member insurers
- Changes LTC assessment base to split between life and health accounts
- Clarifies ability to adjust rates and coverage in liquidation
- Clarifies Medicare/Medicaid exclusion from assessment base
- Hybrid products – Life or annuity policies with LTC riders will be considered the same as the underlying policy – not as a health insurance product
Previous Model excluded HMOs from Guaranty Association – some states either include (WY, ID) or have separate GA (IL, FL)

Model was opportunity to address anomaly of HMOs that offer identical products to health insurers but do not afford identical GA consumer protection

Ensures protection of HMO members & enrollees

Expands assessment base for health account

Large health insurers with HMO subsidiaries agreed with need to include HMOs
Adopted – Signed in seven states:
  ◦ Maine, Virginia, West Virginia, Indiana, Arizona, Utah, Idaho

Awaiting signature in four states:
  ◦ Alaska, Connecticut, Louisiana, Missouri

Bill Pending two states
  ◦ California, Illinois

Under Consideration for 2019 -- ???