

Note: All references included in this template are to the Model Act; please replace with references to your state's statute.

# HMO MEMBER ORIENTATION

June 2018

# WE WILL COVER

- ❖ OVERVIEW OF THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION SYSTEM
- ❖ STATE GUARANTY ASSOCIATION OPERATIONS
- ❖ HANDLING AN INSOLVENCY
- ❖ EXAMPLES OF RECENT INSOLVENCIES



**OVERVIEW:**  
**THE LIFE AND HEALTH INSURANCE**  
**GUARANTY ASSOCIATION SYSTEM**

# OVERVIEW

- Each state, the District of Columbia and Puerto Rico have a guaranty association that covers life, health, and annuity policies, plans or contracts.
- [Note, each jurisdiction also has a statutorily created insurance guaranty fund covering property and casualty policies.]
- State life and health insurance guaranty associations are created by legislative enactment based on the NAIC Life and Health Insurance Guaranty Association Model Act.
- Recently, in December 2017, the NAIC Model was modified to include HMOs as member insurers of the guaranty association.

# OVERVIEW

- Our West Virginia life and health insurance guaranty association statute was originally enacted in 1977.
- Over the years, as the Model Act has been updated, legislation to incorporate certain changes has been adopted to update the West Virginia guaranty association act.
- This year, the West Virginia legislature adopted a number of 2017 Model changes, including the addition of HMOs to the guaranty association membership.
- See the reference materials provided for a copy of our guaranty association's enabling act.

# OVERVIEW

- **Members** of the guaranty association are all insurers or HMOs licensed in our state to write a line of business covered by the guaranty association.
- The **purpose** of the guaranty association is to provide a safety net for resident policyholders when a member insurer becomes insolvent.
- Guaranty associations typically require an order of liquidation with a finding of insolvency for activation.
- Guaranty associations are fundamentally different from the FDIC because insurance policies and contracts are different from bank deposits.

# OVERVIEW

- Guaranty associations are governed by a **Board of Directors**.
- Each **director** typically **represents** a different **member insurer**.
- Some guaranty association boards have **public members**.
- The **insurance commissioner** typically has some level of **oversight** of the guaranty association, including approval of members of the board of directors.

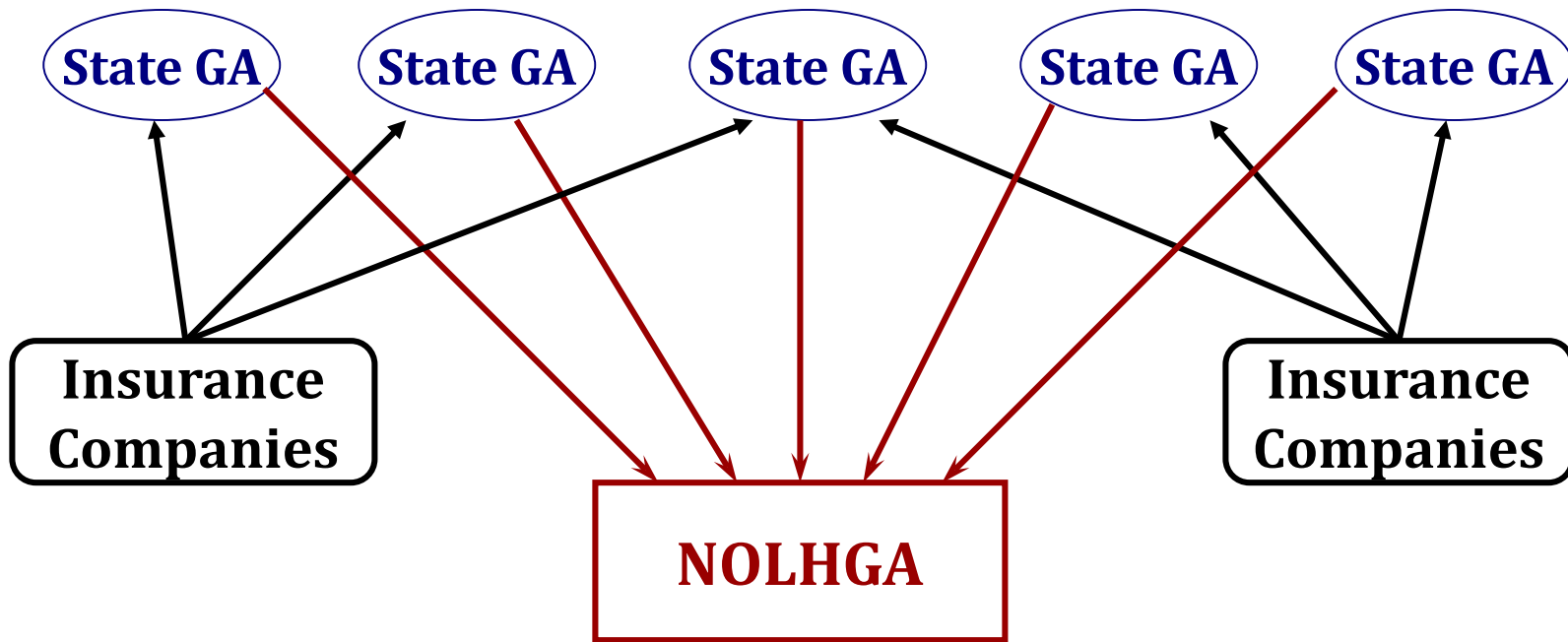
# OVERVIEW

- Day to day operations of a guaranty association are the responsibility of an **administrator** (executive director, manager, *etc.*).
- The administrator is typically assisted by **staff**, which may include a controller, administrative support and claims handlers.
- The administrator and/or staff may be employees or independent contractors.
- Some duties may be outsourced rather than performed in house (*e.g.* accounting, assessment processing).



# OVERVIEW

- **NOLHGA** (National Organization of Life and Health Insurance Guaranty Associations) is a voluntary association of the state insurance guaranty associations from 50 states plus the District of Columbia.
- NOLHGA helps the individual guaranty associations **coordinate** their activities with respect to the insolvency of a multi-state insurer.
- This coordination is **facilitated** by the NOLHGA **MPC** (Members Participation Council) and **task forces** appointed for each multi-state insolvency.
- See the reference materials provided for more information on NOLHGA.



# OPERATIONS

## ○ Life and Health Insurance Guaranty Association Act

- **Purpose** (Section 2)
- **Coverage** (Section 3)
- **Limits** (Section 3)
- **Exclusions** (Section 3)
- **Board of Directors** (Section 7)
- **Powers and Duties** (Section 8)
- **Assessments** (Section 9)
- **Plan of Operation** (Section 10)
- **Duties and Powers of Insurance Commissioner** (Section 11)
- **Immunity** (Section 17)
- **Advertising Prohibition** (Section 19)
- **References are to NAIC Model Act. Replace with citation to applicable state statute.**

# OPERATIONS

- **Coverage**

- As of the date of liquidation, **Resident** policy owners or their beneficiaries, assignees or payees, including health care providers rendering services covered under health insurance policies or certificates.
- **Non-residents** who meet certain conditions.

# OPERATIONS

- **Guaranty Association Coverage Limits**

- **Life insurance**

- \$300,000 in death benefits
- \$100,000 in cash surrender or withdrawal value

- **Annuities**

- \$250,000 in present value of allocated annuity benefits
- \$250,000 in present value of structured settlement annuity benefits
- Unallocated annuities may be covered up to \$5 million per contract holder in some states

- **Health insurance benefits**

- \$500,000 health benefit plan benefits
- \$300,000 in disability income or long-term care benefits
- \$100,000 in other health insurance benefits

# OPERATIONS

## ○ Exclusions

- Portion of contract not guaranteed by insurer
- Reinsurance
- Interest in excess of a benchmark
- Self-funded programs
- Policies issued by unlicensed insurer or fraternal benefit society
- Unallocated annuity protected by PBGC
- Obligations based on marketing material or other non-contract material
- Medicaid and Medicare Parts C & D
- Factored structured settlements

# OPERATIONS

## ◉ **Board of Directors**

- Not less than seven (7) nor more than eleven (11) members
- In a few states, insurance commissioner is a board member
- See reference materials provided for a directory of current board members

# OPERATIONS

## ○ Powers and Duties of Guaranty Association

- Guarantee, assume, reissue, or reinsure policies or contracts of insolvent insurer
- May provide substitute policies
- May impose permanent lien on policy or contract
- May impose temporary moratorium on payments of cash value or policy loans
- Assist commissioner of insurance in detection and prevention of insolvencies



# OPERATIONS

## ○ Assessments

- Provide funds for operation of guaranty association
- Class A assessment for administrative, legal and other expenses
  - In amount determined by Board
  - May be pro rata or non pro rata
- Class B assessment for policy obligations with respect to an insolvent insurer
  - In an amount determined by Board for each account and subaccount
  - Pro rata / or for LTC there is a formula
  - Based on average premium written in three years preceding impairment or insolvency
  - Shall not in any year exceed two percent (2%) of average premium written in any three years preceding impairment or insolvency
  - Based on premium data reported by member companies to NAIC

# OPERATIONS

## ○ Assessments

- Premium Data
  - NAIC Premium Data
  - NOLHGA Assessment Data Survey
  - Input Data into Assessment System
  - Data Verification
    - Address
    - Premiums

# OPERATIONS

## ○ Assessments

- Cash Flow Needs
  - Expenses
    - Claim payments
    - Funding assumption reinsurance agreements
    - Administrative
  - Income
    - Early Access
    - Interest Income
    - Premiums

# OPERATIONS

- **Assessments**

- Members are required to pay assessment to maintain license
- May be recouped through policy surcharge

# OPERATIONS

## ○ Plan of Operation

- Plan and amendments must be submitted to Commissioner for approval
- Board Committees
- Procedures for handling assets
- Meetings
- Records
- Selection of directors
- Other policies and procedures
- See reference material provided for current Plan of Operation

# OPERATIONS

## ○ Policies

- Conflict of Interest
- Anti-Trust Compliance
- Investment Policy
- Expense Reimbursement Policy
- Privacy and Cyber-security Procedures
- See reference materials provided for copy of each policy

# OPERATIONS

## ◉ Powers and duties of Commissioner

- Degree of oversight of guaranty association varies from state to state
- May suspend or revoke license of a member insurer that fails to pay assessment
- May hear appeals regarding final action of Board

# OPERATIONS

- **Advertising Prohibition**

- Unlawful to use existence of guaranty association in sales solicitation



# **HANDLING AN INSOLVENCY**

# HANDLING AN INSOLVENCY

## ○ The Players

### ❖ State Insurance Commissioners

- State of domicile of insolvent insurer
- Other states where licensed

### ❖ Guaranty Associations and NOLHGA

- Task Force
- MPC (All affected guaranty associations)

### ❖ Constituents

- Policyholders
- Creditors
- Agents
- Owners/Shareholders

# HANDLING AN INSOLVENCY

## ◉ **Domestic Insurance Commissioner**

- Seeks court authority to place insurer in receivership
- Supervises insurer's activities
- Determines whether to rehabilitate or liquidate
- Develops plan
- Marshals assets
- Provides for early access to guaranty associations
- Prosecutes claims against third parties
- Arranges for payment/disposition of claims/policies
- Adjudicates creditor claims

# HANDLING AN INSOLVENCY

## ◉ **Guaranty Association Role**

- Protect policyholders
- Ensures continuation of coverage where appropriate
- Guarantees, assumes, reissues, or reinsures policies
- Adjudicates and pays policy claims
- Collaborates with domestic insurance commissioner and special deputy receiver

# HANDLING AN INSOLVENCY

## ◉ **NOLHGA Role**

- Coordinates multi-state insolvencies
- Speeds resolution and controls costs
- Oversees task force consultants
- Communicates with regulators and insurance industry
- Collects assessable premium data
- Monitors estate activity
- Serves as information and communication center

# HANDLING AN INSOLVENCY

## ◉ **NOLHGA Insolvency Task Force**

- Multi-state insolvencies
- Represents interests of affected guaranty associations
- Plans and budgets for handling covered obligations
- Resolve other major issues
- Presents plan for resolution to NOLHGA MPC for adoption
- Composition of task force depends upon circumstances of each case

# HANDLING AN INSOLVENCY

## ○ Issues, Problems and Complexities


- First priority is stabilization of liquidity
  - Temporary moratorium on surrenders/withdrawals
  - Provisions for exceptions in hardship cases
- Continuation of insurance coverage
  - Needed by policyholders
  - Required by guaranty association acts with some exceptions
- “Asset workout” over time to maximize value
- Creation of special purpose entity (captive insurer) to manage assets and administer blocks of business

# HANDLING AN INSOLVENCY

## ◉ **Treatment of Policyholders**

- Provide a safe, warm and dry new “home” for policyholders when possible
  - Quick and orderly sale through RFP and competitive bid process
- If no market for block of business, arrange for administration by TPA
  - Collects premium
  - Processes and pays claims





**EXAMPLES  
OF  
RECENT INSOLVENCIES**

# EXAMPLES OF RECENT INSOLVENCIES

- **Executive Life Insurance Company of New York (NY)**

- ✓ Sister company of ELIC
- ✓ In rehabilitation since 1991
- ✓ Investment earnings lower than anticipated by Plan of Rehabilitation
- ✓ Deficit grew over time as benefits continued to be paid at 100%
- ✓ Structured settlement annuities
- ✓ Uncovered benefits

# EXAMPLES OF RECENT INSOLVENCIES

- **Executive Life Insurance Company of New York (NY)**

- NOLHGA Task Force developed plan
- Created captive insurer to manage assets and coordinate policy administration
- Guaranty associations contributed funding up to coverage limits
- Life insurance industry coalition contributed additional monies and guarantees to fill part of coverage gap
- Life insurance industry also contributed funds to create its own hardship fund for SSA payees

# EXAMPLES OF RECENT INSOLVENCIES

## ◦ **Lincoln Memorial Life Insurance Company (TX)**

- ✓ Sold small face value life insurance policies in connection with prepaid funeral contracts
- ✓ Mismanagement of company funds by Cassity family and their co-conspirators of over \$500 million
- ✓ Most of policies in Texas and Missouri but also spread across other states
- ✓ Scheme involved fraudulent surrender of policies and replacement of whole life policies with term policies
- ✓ Victims were policyholders and funeral homes
- ✓ Guaranty associations agreed to pay death claims under life insurance policies
- ✓ Civil and criminal proceedings brought against those involved in fraud

# EXAMPLES OF RECENT INSOLVENCIES

- **Penn Treaty Network America Insurance Company (PA) and American Network Insurance Company (PA)**
  - ✓ Primarily wrote long-term care
  - ✓ Domiciled in Pennsylvania
  - ✓ Policies underpriced, rich benefits, loose triggers
  - ✓ Ordered into rehabilitation in 2009
  - ✓ Receiver filed petition in late 2009 to convert to liquidation
  - ✓ Opposed by shareholder
  - ✓ Denied in May 2012 after lengthy proceedings
  - ✓ Receiver appealed decision to Pennsylvania Supreme Court

# EXAMPLES OF RECENT INSOLVENCIES

## ○ **Penn Treaty and American Network (PA)**

- ✓ Court ordered receiver to come up with plan of rehabilitation
- ✓ Rehabilitation plan proposed by receiver met with objections
- ✓ Court ordered attempt to work out objections
- ✓ Condition of companies continued to deteriorate
- ✓ PA Supreme Court affirmed trial court's decision but instructed court to give due deference to Commissioner's findings in future
- ✓ Receiver reached settlement with shareholder
- ✓ Commissioner filed a second petition to convert to liquidation
- ✓ Order of liquidation entered on March 1, 2017

# EXAMPLES OF RECENT INSOLVENCIES

## ○ Penn Treaty and American Network (PA)

- 50 GAs affected
- Task Force created resolution plan
- Plan includes creation of protected cell captive insurer to manage assets and coordinate policy administration
- Interim service agreement with receiver
- Settlement negotiated with intervening health insurers
- GAs implemented national rate increase strategy

# EXAMPLES OF RECENT INSOLVENCIES

## ○ SeeChange Health Insurance Company (CA)

- ✓ California-domiciled health insurer
- ✓ Licensed in 25 states
- ✓ Most of the business in California (90%) and Colorado (8%)
- ✓ All policies cancelled effective December 31, 2014
- ✓ Order of Liquidation entered January 28, 2015
- ✓ SeeChange leased provider network from CIGNA
- ✓ CIGNA also provided medical management and repriced provider services
- ✓ The Loomis Company served as TPA for SeeChange
- ✓ The Loomis Company could not administer business without CIGNA's cooperation and assistance



# EXAMPLES OF RECENT INSOLVENCIES

## ◉ **SeeChange Health Insurance Company (CA)**

- NOLHGA SeeChange Task Force negotiated agreements with both Loomis and CIGNA to facilitate processing of claims in liquidation
- Task Force also contracted with Tharp and Associates to audit claims
- Guaranty Associations paid over \$19 million in claims
- CMS filed claim in excess of \$4 million with estate based on the ACA risk adjustment program and transition reinsurance requirements
- CMS asserted its claims are entitled to first priority under the Federal Priority Statute
- Receiver ruled that CMS claims were properly placed below policyholder claims setting up potential litigation

# EXAMPLES OF RECENT INSOLVENCIES

- **SeeChange Health Insurance Company (CA)**

- ❖ Department of Justice decides to not pursue priority of CMS claim in SeeChange case
- ❖ Lessons learned
  - Cancellation of all policies critical
  - Limits claim exposure of guaranty associations
  - Maintaining infrastructure (provider network, TPA, key employees) essential

# EXAMPLES OF RECENT INSOLVENCIES

## ○ **Co-Opportunity Health (IA)**

- ✓ Consumer Owned and Operated Plan (COOP) under Affordable Care Act
- ✓ Licensed as life/health insurer in Iowa and Nebraska in 2013
- ✓ Participated on ACA Exchange in both states
- ✓ Placed in rehabilitation December 23, 2014
- ✓ 110,000 policyholders at date of rehabilitation
- ✓ Order of Liquidation entered February 28, 2015
- ✓ 23,000 policyholders at liquidation
- ✓ Received \$154 million in start-up loans from Federal government

# EXAMPLES OF RECENT INSOLVENCIES

## ○ **Co-Opportunity Health (IA)**

- ✓ Iowa guaranty association levied assessment of \$45 million to pay claims
- ✓ Nebraska guaranty association levied assessment of \$46.8 million to pay claims
- ✓ Premiums underpriced by more than 30%
- ✓ Extremely fast growth
- ✓ Projected 10,000 to 20,000 policyholders
- ✓ Actual policyholder count of over 100,000
- ✓ Request for additional funding of \$55 million denied by CMS
- ✓ ACA payments, including risk corridor, not fully funded

# EXAMPLES OF RECENT INSOLVENCIES

- **Co-Opportunity Health (IA)**

- Co-Opportunity expected \$130 million in risk corridor payments
- Received \$0
- Potential for litigation over priority of Federal claims

# APPENDIX

- **Sample List of Reference Materials to Be Provided to New Members if requested**
  - Board of Directors Listing
  - Executive Director Bio
  - Enabling Act
  - Plan of Operation
  - Investment Policy, Conflict of Interest Policy, Anti-Trust Compliance Policy and any other Policy Adopted by the Board
  - Most Recent Audited Financial Statements
  - Information about NOLHGA