Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 141 (Delegate Cullison, *et al.*)
Health and Government Operations Finance

Life and Health Insurance Guaranty Corporation Act - Revisions

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This bill revises various provisions of the Life and Health Insurance Guaranty Corporation Act, including adding health maintenance organizations (HMOs) as assessable member insurers and establishing a mechanism to more fairly assess for receiverships involving long-term care insurers.

Fiscal Summary

State Effect: The bill does not substantively change State operations or finances.

Local Effect: The bill does not substantively change local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Purpose and Definitions

Current Law: The Life and Health Insurance Guaranty Corporation was established in 1970 to provide limited protection to State residents holding insurance policies or annuities issued by the corporation's member insurers in the event that such an insurer becomes insolvent. The corporation operates under the supervision of the Maryland Insurance Commissioner and consists of all insurers licensed to sell life insurance, accident insurance,

health insurance, and individual annuities in the State. The corporation is governed by a board of directors elected by and from its member insurers.

Definitions: The bill expands the definition of "member insurer" to include an HMO that is licensed or holds a certificate of authority to transact in the State or an HMO business. The bill specifies that "individual" means a natural person covered under an individual policy *or contract* or covered as a member *or an enrollee* under a group policy *or contract* and makes conforming changes throughout the Act. The bill defines "owner" as the owner or holder of a policy or contract who is (1) identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment and (2) properly recorded as the owner of the policy or contract on the books of the member insurer. "Owner" does not include a person who has only a beneficial interest in a policy or contract. The bill also specifies that "person" includes an individual, a corporation, a limited liability company, a partnership, an association, a governmental body or entity, or a voluntary organization. The bill also adds a definition for "health benefit plan."

Purpose: The purpose of the Act is expanded to include protection of persons who are *enrollees* and to include persons covered under supplemental policies and plans.

Scope of the Act

Under current law, coverage must be provided, for specified policies or contracts, to an individual who is a resident of the State and, in special circumstances, to a nonresident. For specified policies or contracts other than structured settlement annuities, coverage must be provided to a person that is a resident and an owner of (or certificate holder under) the policy or contract. Similarly, coverage must be provided for specified policies or contracts (other than structured settlement annuities) to a person that is a nonresident and an owner of (or certificate holder under) the policy or contract. The bill expands this coverage to include HMO *enrollees*.

Under current law, coverage must be provided to a nonresident if (1) the insurer that issued the policy or contract is domiciled in the State; (2) the state in which the nonresident resides has an insurance guaranty corporation or its equivalent; and (3) the nonresident is not eligible for coverage by the insurance guaranty corporation or its equivalent in the state in which the nonresident resides because the insurer was not licensed in that state under that state's guaranty corporation law. The bill specifies that the *member* insurer must be domiciled in the State and permits a nonresident to be eligible if the nonresident is not eligible for coverage in his or her own state because the *HMO* was not licensed in that state.

Under current law, coverage must be provided for specified policies or contracts to a beneficiary, assignee, or payee of a covered person regardless of the person's residence.

Under the bill, this is expanded to include *a health care provider rendering services covered under health care policies or certificates*.

Current law specifies that the corporation does not provide coverage to a person who is a payee or beneficiary of a contract owner who is a resident of Maryland if the payee or beneficiary is provided any coverage by the association of another state. The bill specifies that coverage is not provided to a person who acquires the right to receive payments through a structured settlement factoring transaction regardless of whether the transaction occurred before or after the effective date of specified federal law.

Current law further specifies the types of policies and contracts for which coverage *may not* be provided. This includes any part of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value, as specified. The bill modifies this prohibition against coverage by specifying that it applies *except for a part of a policy or contract, including a rider, which provides long-term care or any other health insurance benefits*.

The bill also specifies that coverage may not be provided for Medicaid, the Maryland Children's Health Program, or a structured settlement annuity benefit to which a payee (or the beneficiary of a payee if the payee is deceased) has transferred the rights in a structured settlement factoring transaction regardless of whether the transaction occurred before or after the effective date of specified federal law.

Board of Directors and Powers of Corporation

The bill increases the size of the board of directors of the corporation from at least 5 but not more than 9 members to at least 7 but not more than 11 members.

Under current law, for a member insurer that is an impaired insurer or an insolvent insurer, the corporation may guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the insurer. The bill expands these powers to include *assume, reissue, or cause to be reissued* any of the covered policies or contracts of the insurer.

Under current law, the corporation has standing to appear or intervene before any court or agency with jurisdiction over an impaired insurer or an insolvent insurer. The standing extends to all matters germane to the powers and duties of the corporation, including proposals for reinsuring or guaranteeing the covered policies of an impaired insurer or an insolvent insurer. The bill expands these powers to include *reissuing* and *modifying* the covered policies.

The bill expands the authority of the corporation to include, in accordance with the terms and conditions of the policy or contract, filing for an actuarially justified rate or premium increase for any policy or contract for which the corporation provides coverage.

Orders of Liquidation

The bill specifies that premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the corporation. If the liquidator of an insolvent insurer requests, the corporation must provide a report regarding premium collection by the corporation. The corporation is liable for unearned premiums due to policy or contract owners arising after the entry of the order.

Long-term Care Riders

The bill specifies that benefits provided by a long-term care rider to a life insurance policy or annuity contract must be considered the same type of benefits as the base life insurance policy or annuity contract to which the rider relates.

Assessments

Under current law, to provide the funds necessary to carry out the powers and duties of the corporation, the board of directors must assess member insurers, separately for each account, at the times and amounts that the board finds necessary. There are two classes of assessments: Class A assessments to meet administrative costs and other general expenses and Class B assessments to carry out powers and duties with respect to an impaired insurer or an insolvent insurer. The board may make a Class A assessment on a pro rata or nonpro rata basis. A nonpro rata assessment may not exceed the amount provided in the corporation's plan of operation per member insurer in one calendar year.

The bill repeals this limitation on a nonpro rata assessment and specifies that, *except for assessments relating to long-term care insurance,* the amount of a Class B assessment must be allocated according to a specified formula. The bill provides that the amount of a Class B assessment for long-term care insurance written by the impaired insurer or insolvent insurer must be allocated according to a methodology included in the plan of operation and approved by the Commissioner. The methodology must allocate 50% of the assessment to accident and health member insurers and 50% to life and annuity member insurers.

Corporation Plan of Operation

Under current law, the corporation must submit to the Commissioner a plan of operation to ensure the fair, reasonable, and equitable administration of the corporation. The plan of operation and any amendments take effect when approved in writing by the Commissioner.

The bill specifies that, unless disapproved by the Commissioner within 30 days after submission, a plan of operation and any amendments to the plan are deemed approved on the 31st day after the date on which the plan was submitted.

Background: According to the National Association of Insurance Commissioners (NAIC), all 50 states, Puerto Rico, the U.S. Virgin Islands (property/casualty only), and the District of Columbia have a guaranty mechanism in place for the payment of covered claims arising from the insolvency of insurers licensed in their state. Before the creation of guaranty associations, a typical claimant could have waited years for payment of a claim and then still received only a fraction of what was due under the terms of the policy or contract. Guaranty associations, subject to statutory limitations, were created to alleviate these problems and ensure the stability of the insurance market. Specifically, in the event of a life/health insurer liquidation, the guaranty mechanism provides for the continuation of eligible contracts that would otherwise terminate.

According to The League of Life and Health Insurers of Maryland, the bill reflects NAIC model legislation that has been adopted in more than 25 states as of December 2019.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 186 (Senator Kelley) - Finance.

Information Source(s): National Association of Insurance Commissioners; The League of Life and Health Insurers of Maryland; Judiciary (Administrative Office of the Courts); Maryland Insurance Administration; Department of Legislative Services

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