

**MAINE GUARANTEED ACCESS REINSURANCE ASSOCIATION**  
**Minutes of the Board of Directors**  
**April 14, 2015**

A regular meeting of the Board of Directors of the Maine Guaranteed Access Reinsurance Association (“MGARA” or the “Association”) was held at 3:00 p.m. on December 15, 2014 by telephone conference call. Attendance is reflected in the record of attendance set forth below:

Jennifer Juke	Edward J. Kane
Katherine Pelletreau	Christopher T. Roach
William M. Whitmore	Jolan F. Ippolito
Joel Allumbaugh	Dana Kempton
	Dr. David Howes

Also in attendance were Chris Howard, counsel and Laren Walker, administrator.

**1. Public Session**

The Board opened the public session. No members of the public appeared, and the public session was closed, without comment.

**2. Approval of Minutes**

The Board reviewed the minutes of the December 15, 2014 meeting. On motion duly made and seconded it was

RESOLVED: To approve the Minutes of the Board’s December 15, 2014 meeting as presented.

**3. Report re Annual Members Meeting and Board Roster**

A brief report was made regarding the lack of participation at the public session. The Board reviewed the Board roster and provided Mr. Howard with corrections to be incorporated.

**4. Monthly Operations Report**

The first order of business was the presentation of the draft audit of the 2014 year. The audit partner from Eide Bailey joined the meeting via conference call and presented the audit. She pointed out that the financials are presented on a modified cash basis. Importantly, all IBNR has been moved to investments, and the Harvard Pilgrim late ceding claim has been incorporated. She indicated there are no new footnotes, calling the Board’s attention to the footnotes regarding the uncertainty created by the IRS ruling regarding the Association’s federal income tax status, the uncertainty surrounding the

pending challenges to the ACA and the treatment of IBNR. Following her presentation and discussion, on motion duly made and seconded, it was unanimously

RESOLVED: to accept the draft audit, as presented.

Laren Walker presented the Monthly Operations Report for results through February 2015. He briefly reviewed the January report, but focused on the February report. Cash and investments as of February 28 were \$5,750,356, with total assets of \$5,848,304. Mr. Walker reported IBNR of \$0, and a fund balance of \$5,290,898, reflecting the movement of IBNR to cash and investments. Mr. Walker reported that, once the Harvard Pilgrim claim is processed, cash will be approximately \$5,300,000.

Mr. Walker reviewed the Statement of Revenues and Expenditures, which showed nominal activity for the period.

## **5. IRS Ruling**

The next item for discussion was the Internal Revenue Service ruling that the Association did not qualify for 501(c)(26) status due to providing reinsurance for same sex spouses and children through age 26. Mr. Howard made a presentation regarding the protest filed with the IRS and the Conference of Right recently concluded with the IRS. The substance of the arguments is set out in the memorandum included in the Board's package.

General discussion ensued regarding the plan for dealing with an adverse determination, aside from continued appeal. No decisions were made in this regard, with the subject matter to be revised as the protest progresses.

Mr. Howard provided an explanation regarding the filing of a protected Form 1120 for the 2013 year, which was filed in order to protect the ability to take losses for that year. The Board discussed the potential liability associated with an adverse determination, estimating that liability at approximately \$2,837,000, with interest and penalties.

The Board discussed the possibility of federal legislation and contacting Maine's congressional representatives to explore the possibility of legislative relief.

## **6. Amendment to Plan of Operation**

Mr. Howard presented a memorandum regarding proposed amendments to the Association's Plan of Operation resulting from the lack of clarity identified in the consideration of the Harvard Pilgrim late ceding dispute. Following discussion, the Board made a deletion to some of the suggested language added to Section 10.1 and, with that change, on motion duly made and seconded, it was unanimously

RESOLVED: to approve the following amendments to the Association's Plan of Operations:

1. Section 9.4(d) will be deleted, and the following substituted in lieu thereof. Changes are shown in red type.

“(d) Covered Person Information Omission or Misrepresentation. If a Covered Person fails to complete the Health Statement, omits material information from the Health Statement or materially misrepresents his or her health status to a Member Insurer, a Member Insurer may designate that person for reinsurance within sixty (60) days after the date on which the Member Insurer becomes, or reasonably should have become, aware that the person should have been designated. The determination whether a Member Insurer reasonably should have become aware that the person should have been designated will be made based upon all information available to the Member Insurer with respect to that person's health status, including, without limiting the generality of the foregoing, (i) information submitted with the person's application, (ii) information contained in the Member Insurer's files regarding the person's claims history or health conditions, and (iii) clinical information obtained by the Member Insurer including information obtained through its underwriting, care management and claims administration functions, and specifically including clinical information obtained through the Member Insurer's care management or claims administration process. The date that the Member Insurer will be deemed to have knowledge of such information will be determined based upon the actual date of receipt of the information, as evidenced by the Member Insurer's written records or other available files or data.”

2. Section 10.1 of the Plan will be deleted, and the following substituted in lieu thereof. Changes are shown in red type.

“10.1 Discretionary Ceding: Health Statement; Other Basis. Designation of a Covered Person pursuant to this Section 10.1 is referred to herein as a “Discretionary Cede” or “Discretionary Ceding,” as applicable. Discretionary Ceding determinations may be made by Member Insurers on the basis of any reasonable means of determination, including, but not limited to, information contained in a Health Statement submitted by a Covered Person, the Covered Person's claims history or any risk scoring methodology. The foregoing is not intended as an exhaustive list of the means of determination, and Member Insurers may rely upon any reasonable means of determination.

## **7. Transition of Administrative Services**

The next order of business was discussion of the proposal included in the Board materials regarding assignment of the AmeriBen Administrative Services Agreement to River 9 Consulting, Inc. Through the course of discussion, the Board made several suggestions relative to the assignment, including:

(a) Increasing the errors and omissions coverage to \$1 million per occurrence and \$3 million aggregate, with provision for the Association to pay for any corresponding increase in premium on a pass through basis, as part of the administrative services fee.

(b) River 9 Consulting, Inc. should be included in the review of MGARA's controls provided by Eide Bailey.

(c) Mr. Howard was directed to revise the assignment to clarify that AmeriBen remains responsible for liability associated with any inappropriate access to Association data or data breaches resulting in access to Association data on the AmeriBen systems.

Following this discussion, on motion duly made and seconded, it was

RESOLVED: to approve the assignment and extension of the AmeriBen Administrative Services Agreement, as presented, with the changes set forth in subparagraphs (a) and (c) above, and to authorize the execution and delivery of the assignment and extension by the Chair.

#### **8. Report re LD 243**

Mr. Howard made a brief report regarding LD 243, indicating that the provisions regarding the Association have been deleted from that bill.

#### **9. Discussion re Current Status of Maine Individual Market and Potential for Reactivation**

General discussion was held on this subject. No conclusions were reached, and no action was taken.

#### **10. Meeting Schedule**

The Board confirmed the meeting schedule for the balance of 2015, as follows:

June 15, 2015 – conference call  
September 21, 2015 – conference call  
December 21, 2015 – conference call

There being no further business to come before the board, the meeting was adjourned.



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Duly Authorized Officer