

MAINE GUARANTEED ACCESS REINSURANCE ASSOCIATION
Minutes of the Board of Directors
September 28, 2020

A regular meeting of the Board of Directors of the Maine Guaranteed Access Reinsurance Association (“MGARA” or the “Association”) was held via videoconference at 3:00 p.m. Attendance is reflected in the record of attendance set forth below:

Joel Allumbaugh	Marybeth Liang
Dr. David Howes	Jim Lyon
Jolan F. Ippolito, Chair	Bruce Nicholson
Ben Johnston	Katherine Pelletreau
Dana Kempton	Ellen Schneider
Kevin Lewis	

Also in attendance were Laren Walker of River 9 (administrator) and Chris Howard and Emily Cooke of Pierce Atwood LLP (counsel to the Association).

1. Board Vacancy – Dan Rachfalski Resignation

Ms. Ippolito reminded the Board that Dan Rachfalski has resigned from the Board, effective as of September 25, due to his departure from Harvard Pilgrim to accept a position at Aetna. Board members reiterated their appreciation for Dan’s service and contributions during his tenure.

Harvard Pilgrim has identified Bill Whitmore, who has previously served on the MGARA Board, as its nominee to replace Dan. The Board is not obligated to accept a member insurer’s nominee, but historically the Board has done so. Those who have previously served on the MGARA Board commented on Mr. Whitmore’s past service, excellent skills, and important contributions to the Board’s work. Following brief discussion, it was generally agreed that, as has been the Board’s approach with other candidates for Board seats, Ms. Ippolito as Chair would have a conversation with Mr. Whitmore about his experience and fit with the position and report back to the Board which will then vote on Mr. Whitmore’s candidacy.

2. Approval of Minutes

The Board reviewed the minutes of the Board’s August 17, 2020 meeting (the “Minutes”). On a motion duly made, it was

RESOLVED: To approve the Minutes as presented.

3. Monthly Operations Report

Mr. Walker presented the monthly operations report as of July 31, 2020. As planned, MGARA is approaching exhaustion of the 2020 funding from its federal Section 1332 grant (the “1332 Grant”). Revenue from assessments, premium, and the 1332 Grant are all generally consistent with projections. (Assessment revenue is slightly under projections, but this is consistent with the fact that the most recent assessment deadline of August 15 fell after the close of the month on which the financial report is based.) Total claims have consistently been in the \$6-7MM range over the past several months. Administrative expenses exceed budget, largely due to Milliman’s work around the merged market initiative. Ceded lives lag projections; several participants pointed out that the projected number of ceded lives ought to be updated to better reflect the actual market size, which has decreased.

Ms. Schneider requested that the Board receive additional information regarding the continuing discrepancy among carriers with respect to mandatory ceding. Mr. Howard commented that in order to understand the significance (or lack thereof) of the discrepancy, the mandatory ceding numbers should be adjusted for carriers' relative market share. It was agreed that an updated snapshot of mandatory ceding that controls for market share will be prepared for the Board's review and analysis.

4. Express Scripts Request for Refund of Assessment Paid in Error for 2019 and 2020

Mr. Howard explained that Express Scripts has requested a refund of assessment amounts that it paid in 2019 and 2020 in error. Although the origins of Express Scripts's error is unclear, the applicability of MGARA's assessment rules is not, as Express Scripts did not provide health insurance in either year. Accordingly, the Board is requested to approve a refund to Express Scripts in the amount of \$205,656 (the "Express Scripts Refund"). This is being put to the Board on account of the size of the proposed refund.

A Board member inquired whether it would have been possible to identify this error at an earlier stage. Mr. Walker explained that assessments are self-reported, and the administrators lack insight into many assessed entities' business models, including that of Express Scripts.

On a motion duly made, it was

RESOLVED: To approve the Express Scripts Refund.

5. CMS Update

Mr. Howard provided a brief report on MGARA's compliance with the reporting framework associated with the 1332 Grant. The Association is current on all of its required reporting, and drawdowns of grant funds continue to go smoothly. As has been true in the past, the timing of CMS's 2021 pass-through payments estimate remains the key question, and CMS has not, to date, provided an anticipated timeframe.

6. RFP Process for Principal Service Providers and Discussion of Possible Changes to MGARA Procurement Policy

Mr. Howard explained that MGARA's enabling legislation requires that the role of the administrator be put to a competitive bidding process every three years, and accordingly MGARA must now put out a request for proposals for the role currently played by River 9. Additionally, pursuant to the terms of the 1332 Grant, MGARA's Procurement Policy tracks federal procurement standards, which requires a competitive bidding process for other professional services, including legal and actuarial services.

Mr. Howard noted that the meeting materials include draft requests for proposal (RFPs) for MGARA's legal and actuarial services as well as the administrator. However, the Board may wish to consider postponing the RFP process for its legal and actuarial providers, to avoid the risk of simultaneous turnover among multiple professional service providers. (MGARA's third-party administrator contract is statutorily required to be submitted to bid every three years, but legal and actuarial service contracts can be on a different cycle).

A brief discussion ensued. There was a general consensus that it would be prudent to avoid having all professional service provider contracts on the same cycle. Ms. Ippolito suggested that there would be logic to placing the legal and actuarial services on a 5-year cycle to track the 1332 Grant. Ms. Schneider commented that the uncertain future of the Affordable Care Act should be acknowledged in the draft RFPs, given the vast implications for MGARA if the ACA were to be invalidated or repealed. There was a general consensus that MGARA's professional services contracts ought to include a termination right in the event that were to occur.

Mr. Nicholson inquired about the process for reviewing RFP responses, and whether this would be conducted by the full Board or a committee of the Board. Mr. Howard replied that, historically, the full Board has handled this function, but it is free to appoint an ad hoc committee to manage this going forward. It was generally agreed that this would be a sensible approach.

Ms. Ippolito concluded by confirming that the Board would return to the discussion at its next meeting, at which time the Board can establish an ad hoc committee and decide on next steps.

7. Review of Form 990

Mr. Howard reminded participants that MGARA's draft 2019 Form 990 was included in the meeting materials for Board review in advance of the meeting. No comments or questions were offered.

8. Discussion re Status of Small Group Merger Initiative

Mr. Howard reiterated the summary of the recent Public Forum held on the Small Group Merger Initiative. The Forum was well attended (virtually), with about 65 attendees at one point in the meeting. That said, there was limited active participation. Gorman Actuarial made a presentation of their findings. Mr. Howard spoke for MGARA and Dave Williams gave a report on Milliman's analysis.

MGARA's comments were couched in the "neutral but concerned" character discussed at some length at the prior Board meeting. Both Anthem and MeAHP spoke in opposition based on (i) the modest help the initiative provides to the small group market while materially adversely affecting MGARA's ability to continue to provide meaningful relief to the individual market and (ii) the failure to satisfy the statutory requirement that the merger not result in an increase in rates in either market over the markets without the merger. Both Anthem and MeAHP pointed out that the reports from each of Gorman and Milliman demonstrated that this statutory criterion was not met. All speakers at the Public Forum recognized the need to provide relief to the small group market, and that the small group merger was a trade-off in that it compromised MGARA's ability to assist the individual market. However, different groups came to different conclusions on the relative merit of the proposal.

Mr. Howard reported that the Bureau is planning to engage a third actuary to review and analyze the differences between the Gorman and Milliman findings. In the meantime, the Bureau is proceeding apace with other steps associated with the market merger initiative.

A robust discussion ensued. Many participants expressed concern and confusion as to how or why a market merger process can continue when the required actuarial studies demonstrate that the statutory conditions have not been met. Many expressed concern that MGARA's "neutral but concerned" stance may fail to convey the full gravity of the risks posed by a market merger under current actuarial projections to MGARA's ability to provide relief to the individual market. Participants urged that MGARA articulate these risks more actively, and communicate its strong willingness to play an active role in exploring and identifying alternative solutions that seek small-group market relief without inflicting harm on the individual market. Following additional discussion, on a motion duly made and seconded, it was

RESOLVED: To move forward to express MGARA's position that the proposed market merger will harm the individual market, and express MGARA's willingness to assist in exploring alternative means of providing rate relief to Maine's small-group market.

It was agreed that Mr. Howard would circulate a draft communication for review and comment prior to next Monday's Board meeting.

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

Duly Authorized Officer