

MAINE GUARANTEED ACCESS REINSURANCE ASSOCIATION
Minutes of the Board of Directors
March 22, 2021

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	Jim Lyon
Dr. David Howes	Bruce Nicholson
Jolan F. Ippolito, Chair	Katherine Pelletreau
Ben Johnston	Ellen Schneiter
Dana Kempton	Bill Whitmore
Kevin Lewis	

Also in attendance were Laren Walker and Diane Kopecky of River 9 (administrator), Dave Williams, Sean Hilton, and Tom Murawski of Milliman, Inc. (actuary), and Chris Howard and Emily Cooke of Pierce Atwood LLP (counsel to the Association).

1. Approval of Minutes

The Board reviewed the minutes of the Board’s February 22, 2021 meeting (the “Minutes”). On a motion duly made, it was

RESOLVED: To approve the Minutes as presented.

2. Monthly Operations Report

Mr. Walker presented the monthly operations report as of January 31, 2021. He noted that MGARA’s audit is nearing completion, with results expected to be presented at the Board’s annual meeting in April.

Mr. Walker briefly shared highlights from the operations report. Cash and investments stood at \$70MM. Although MGARA has not yet received formal notification of its 2021 1332 Waiver grant funds calculation from the federal Centers for Medicare and Medicaid Services (“CMS”), it has been informally notified of the calculation (approximately \$30.7MM). MGARA’s investment horizon has been extended modestly to account for the anticipated availability of grant funds.

Terminations were high through February 20, 2021, and River 9 is examining this more closely.

Mr. Walker noted that MGARA is shifting its accounting standards from FASB (Financial Accounting Standards Board) to GASB (Government Accounting Standards Board), as is appropriate for an entity the majority of the board of which is appointed by a government office or official. Mr. Howard added that the two standards are not significantly different, so this change does not represent a major shift.

3. Administrative Matters

The Board then turned to a series of administrative matters.

A. Cyber Insurance Renewal

Mr. Howard shared that MGARA's 2021 cyber insurance renewal came in about 55% higher than its 2020 premium. This generally reflects realities in the cyber insurance market.

Ms. Pelletreau inquired whether it might be productive for the carrier to conduct a stress test of MGARA's systems, both to protect the Association and to potentially improve its risk profile from the carrier's perspective. Mr. Walker noted that each year the carrier asks (and MGARA and River 9 answer) many questions, but MGARA has not received specific feedback or expressions of concern in response. He added that HIPAA compliance drives River 9's security design. Dr. Howes queried whether, at some point, River 9 might need to carry additional security certifications in order to remain abreast of legal and industry standards. Ms. Ippolito suggested this might be an appropriate question on which to seek input and/or support from the carrier.

B. Board Term Limits

Mr. Howard reported that the Maine Secretary of State had inquired about MGARA board members' term limits, given that MGARA's enabling legislation specifies that board members will serve a total of three 3-year terms. (The Secretary of State exercises jurisdiction over these types of administrative board matters because MGARA's board is partially government-appointed.) Given MGARA's operational suspension from 2014 through 2018, it seems reasonable to clarify to the Secretary of State's office that those years should not be included in calculating these term limits.

Mr. Allumbaugh raised the concern that, even if this reasoning defers term limits for some time, the statutory term limits will eventually require a large number of MGARA board members to step down at the same time. This would be highly problematic for MGARA, given the importance of the board's expertise and institutional memory, and would not be an easy gap to fill. There should be a plan to address this, and the Superintendent may need to intervene to avoid a bad outcome. It was widely agreed that this issue should be proactively raised with the Superintendent. Mr. Whitmore echoed this concern.

C. Retroactive Terminations of Mandatory Cedes

Mr. Howard reported that MGARA has experienced a recent high volume of carrier requests to retroactively terminate 2020 coverage of policies that had been ceded pursuant to MGARA's mandatory ceding rules, on the basis that the mandatory ceding condition is no longer manifested or indicated by the member's medical history.

Mr. Howard explained that, as set forth in the meeting materials, there are three sources of information on this topic: Section 3959 of MGARA's enabling statute, Section 10.2 of the MGARA Plan of Operation, and the Guidance provided to carriers in November 2019. Based on

these sources, the fact that a condition does not manifest itself during the plan year does not mean the individual is not a mandatory cede. To the contrary, there may well be years in which the condition does not manifest itself in actual claims. If as of the beginning of each plan year a covered person's medical history demonstrates that the covered person is *no longer subject* to a mandatory ceding condition evidenced in the covered person's medical history, then the carrier can request to have the ceding of that policy terminated as of the upcoming plan year, but that has to be based at minimum on a review of claims history, pharmaceutical or prescription activity, and associated diagnosis codes for the two-year period preceding the plan year for which the termination is requested.

The questions for the Board are (1) what level of scrutiny should River 9 apply in reviewing such requests, and (2) to what extent is the appropriate solution retroactive termination, versus maintaining coverage in 2020 and withdrawing coverage as of 1/1/2021. Mr. Howard emphasized that it is difficult to make a determination whether the absence of any claims is indicative that the person is no longer subject to the applicable condition. Mr. Walker offered some illustrative examples of conditions that may give rise to mandatory ceding, for which the absence of claims in a given year cannot automatically be attributed to the elimination of the condition.

Mr. Kempton noted that claim coding should be specific and precise, so MGARA and River 9 should not accept simplistic answers without more.

Mr. Lewis emphasized that carriers need the ability to correct errors and cure erroneous cedes.

In response to a participant's inquiry, Ms. Kopecky stated that while the issue seems to be affecting 6-8% of mandatory cedes, and the phenomenon is not evenly distributed across carriers: one carrier has made no such requests, another has made such a request with respect to 3% of its ceded lives or less, and a third has made hundreds of such requests.

In response to inquiries from Board members, it was clarified that the consequence of a retroactive termination is a refund of up to 12 months of premium; and that the outcome of this issue could affect MGARA's financial results, though it would not affect MGARA's 1332 waiver.

Mr. Allumbaugh suggested an analogy to a person's smoking status in life insurance; there is a higher evidentiary standard to remove one's status as a smoker from the carrier's records and actuarial calculations once that status has been applied.

Ms. Pelletreau inquired whether Milliman's modeling could be thrown off by a large number of retroactive terminations. Mr. Williams indicated that, while this issue would not necessarily impact 2022 modeling, the original concept of mandatory ceding contemplated the fact that that premiums would exceed expenses, and regression to the mean would accommodate spikes. Permitting an unexpectedly high level of retroactive terminations could undermine this assumption, and thus program stability, over time.

In response to an inquiry from Mr. Lyons, Mr. Howard clarified that the ask of the Board is to provide guidance to River 9 to apply in responding to these requests, which are being made at a much higher frequency than seen in the past. Mr. Allumbaugh wondered what has changed. Mr. Walker reminded the Board of the heavy focus on mandatory cedes at the end of 2019, and the

fact that there has now been a full plan year since that emphasis. Mr. Whitmore pointed out that if one carrier is taking this approach with heightened frequency, other carriers are likely to follow suit, which risks further destabilization to the program.

Both Ms. Kopecky and Mr. Walker drew a distinction between true errors (miscodes) versus “cured” or non-manifesting conditions, which – as noted above – can be hard to define.

Mr. Allumbaugh requested a financial quantification of the issue. It was agreed that Mr. Walker would provide the same, and the Board would hold off on further action until that information is received.

D. RFP Requirements

Mr. Howard noted, and it was generally acknowledged, that, on the one hand, an RFP process for administrator services cannot feasibly proceed without a final decision on the contours of MGARA’s program in 2022 and beyond; on the other hand, the longer this is delayed, the less lead time will be available to plan and implement the RFP process.

4. Milliman Report

Mr. Williams provided a status report on its work updating MGARA’s actuarial model, and its calculation, assuming MGARA’s program continues to function as currently designed, of 2022 attachment points and resulting surplus. A discussion ensued, with the following themes:

- In an assumed steady-state environment, given the volatility expected in the market over the next few years, year-end surplus levels are projected to swing significantly from year to year. How to strike the balance between deploying surplus toward ongoing operations, versus reserving to stabilize against projected volatility, is a challenge that the Board will need to confront as Milliman reaches the conclusion of its modeling and attachment points must be set.
- Current modeling does not account for a merged small group and individual market, as that development remains in flux.
- The American Rescue Plan is an important piece of the puzzle. The act expands the availability of PTCs to eligible individuals whose income is above 400 percent of the FPL for 2021 and 2022, and reduces the level of income that an individual must contribute towards premiums. These changes will push more federal dollars into the system, provided there are no regulatory or administrative changes in the methodology for calculating pass-through payments.
- While the passage of healthcare reforms set forth in PL 2007 obligate MGARA to change to a retrospective reinsurance program if the market merger takes place, they also give MGARA the option to change to a retrospective reinsurance program even without the market merger. This presents yet another decision point for MGARA and the Board.

It was agreed that Milliman would complete its modeling efforts and present the results to the Board at its April meeting, at which time the Board will make final decisions on 2022 attachment points. The Board thanked Mr. Williams and the Milliman team for their continuing efforts.

5. Small-Group Merger Update

Mr. Howard briefly updated the Board on the timing status of the small-group merger determination, as further set forth in the meeting materials. The Board briefly discussed timing implications, given the importance of a timely determination to the 1332 Waiver application and other operational steps that depend on the resolution of this critical question.

Dr. Howes thanked Mr. Howard for the extensive thought and effort he has put into tracking and responding to these issues.

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

A handwritten signature in black ink, appearing to be a stylized 'A' or similar character, positioned above a horizontal line.

Duly Authorized Officer