The Senior Issues (B) Task Force met Feb. 23, 2021. The following Task Force members participated: Marlene Caride, Chair (NJ); Lori K. Wing-Heier, Vice Chair, represented by Sarah Bailey (AK); Jim L. Ridling represented by William Rodgers (AL); Alan McClain represented by Carroll Astin (AR); Evan G. Daniels represented by Erin Klug (AZ); Ricardo Lara represented by Tyler McKinney (CA); Andrew N. Mais represented by Paul Lombardo (CT); Karima M. Woods represented by Mary Beth Senkewicz (DC); Trinidad Navarro represented by Susan Jennette (DE); David Altmaier represented by Chris Struk (FL); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Shannon Hohl (ID); Stephen W. Robertson represented by Karl Knable (IN); Vicki Schmidt represented by Brenda Johnson (KS); James J. Donelon represented by Ron Henderson (LA); Gary D. Anderson represented by Rebecca Butler (MA); Kathleen A. Birrane represented by Adam Zimmerman (MD); Eric A. Cioppa represented by Sherry Ingalls (ME); Anita G. Fox represented by Renee Campbell (MI); Grace Arnold represented by Fred Andersen (MN); Chlora Lindley-Mayers represented by Carrie Couch (MO); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Chrystal Bartuska (ND); Bruce R. Range represented by Laura Arp (NE); Chris Nicolopoulos represented by Maureen Belanger (NH); Barbara D. Richardson represented by Nick Stosic (NV); Judith L. French represented by Laura Miller (OH); Glen Mulready represented by Ron Kreiter (OK); Andrew R. Stolfi represented by Gayle Woods (OR); Jessica K. Altman (PA); Larry D. Deiter represented by Jill Kruger (SD); Carter Lawrence represented by Brian Hoffmeister (TN); Doug Slape represented by Doug Danzeiser (TX); Jonathan T. Pike represented by Tanji J. Northrup (UT); Scott A. White represented by Bob Grissom (VA); Mike Kreidler represented by Michael Bryant (WA); and Mark Afable represented by Jennifer Stegall (WI). Also participating were: Eric Anderson (IL); Paige Duhamel (MN); Martin Wojcik (NY); Sarah Neil (RI); Andrew Dvorine (SC); Anna Van Fleet (VT); and Mavis Earnshaw (WY).

1. **Discussed its 2021 Agenda**

Commissioner Caride asked David Torian (NAIC) to summarize the potential agenda list. Mr. Torian explained the individual items the Task Force plans to do in 2021 and optional issue items the Task Force may wish to consider for the year.

Mr. Torian asked Ms. Arp to explain the issue Nebraska wishes to bring to the Task Force’s attention. Ms. Arp said Nebraska has durable medical equipment (DME) providers, or at least a provider, who has not taken assignment on certain DME products. She said the DME provider discovers that the person is on Medicare and has a Plan F, and the DME provider then charges “what he wants” or, at minimum, full retail for the equipment because he knows Plan F pays for 100% of the excess charges.

Ms. Arp said the federal government normally caps the excess amount on Part B at 15%, but that is not the case for DME. She said Plans F and G are then exposed to 100% of the cost of the DME product in this circumstance. She said in reaction, some carriers have said in their policy that the cost of the product must be medically necessary and the charge must be reasonable, while others may have utilized a usual, customary and reasonable (UCR) standard and limited the payment to that. She said the consumer who bought the Plan F then may be subject to “balance billing” based upon what the carrier did not pay to the DME provider.

Ms. Arp said the question becomes whether a Medicare Supplement carrier can limit the amount paid for the product even though there is no assignment and no cap imposed by the federal government like in other excess charges and what, if anything, would allow a carrier to not pay the full retail (or more) price imposed by a DME provider within the scope of the Medicare Supplement regulation model. She said Nebraska knows of some states that have imposed some restrictions on excess charges, but she also does not know, off hand, how many states have seen this issue arise.

Commissioner Caride asked if anyone has questions regarding the potential issues for the Task Force. Bonnie Burns (California Health Advocates—CHA) raised a concern about a class action lawsuit against Genworth. She said there are about 207,000 Genworth long-term care insurance (LTCI) policyholders who will receive a notice regarding the settlement of this class action lawsuit, and the settlement includes 39,000 Californians with partnership policies. She said several thousand more Californians with non-partnership policies from Genworth will receive a similar notice about their benefit options and premium increases.
Ms. Burns said the class action notices received in California offer policyholders various options to reduce their benefits and premiums, and she said some options include a cash payment, while others include paid up benefits with no further premiums required. She said some policyholders may be given only two options if their existing benefits are for less than two or three years of coverage, and policyholders with more than three years but less than lifetime coverage may have three options. She said policyholders with lifetime benefits may have as many as five options. She said the notice also includes information about a pending premium increase and the possibility of future increases, some of more than 500% for policyholders with lifetime benefits and more than 300% for policyholders with fewer years of benefits.

Ms. Burns said while the disclosure notices resulting from this lawsuit have been largely dictated by the court, notices with similar options were distributed because of the PennTreaty insolvent, and they are likely to be replicated if other insolvrancies occur. In addition, she said the industry has begun to offer various options designed to reduce or eliminate a scheduled premium increase. She said consumer representatives are concerned that policyholders often do not understand the choices they are given or the implications of making one or more of these choices. She said she understands that the issue of reduced benefit options (RBO) is part of the workstream of the Long-Term Care Insurance (EX) Task Force, and she believes the issue deserves discussion within the Senior Issues (B) Task Force, a group that primarily deals with issues affecting older consumers and the model law and regulation for these products.

Ms. Klug asked Ms. Burns if the Task Force could move forward on this issue separate from the Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup. Ms. Burns said yes because consumers must have options, and the Task Force is the group that can address issues in the model. Mr. Knable asked Ms. Burns about the letters going to policyholders and the format, as relates to the model. Ms. Burns said the Task Force should discuss the formatting of these letters and notices, as reflected in the model. Mr. Knable said since this is a class action lawsuit, this matter is probably outside of the NAIC models, as well as perhaps the NAIC jurisdiction and reach. Ms. Nakasone said a standardized letter would not be helpful, as one size does not fit all. Mr. Knable asked about the role of the Long-Term Care Insurance Model Update (B) Subgroup in this matter.

Mr. Torian explained that the purpose of the Long-Term Care Insurance Model Update (B) Subgroup is to first determine whether the Long-Term Care Insurance Model Act (#640) and the Long-Term Care Insurance Model Regulation (#641) need to be updated. If the Subgroup determines that an update is needed, the Subgroup will report to the Task Force on its findings and begin work to update Model #640 and Model #641. Mr. Torian said if the Subgroup determines that Model #640 and Model #641 do not need an update, then the Subgroup is prepared to act on any recommendations that may come from the Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup. Mr. Torian said the Subgroup could begin its work immediately on whether Model #640 and Model #641 need an update, and it would most likely have not yet begun any edit or update on Model #640 and Model #641 prior to any potential recommendations that may come from the Subgroup.

Commissioner Caride asked the Task Force if there are any objections by Task Force members to let the Long-Term Care Insurance Model Update (B) Subgroup begin its work. Mr. Lombardo said he has no objection so long as the Subgroup can be prepared to receive any recommendations that may come from the Long-Term Care Insurance (EX) Task Force and any of its workstreams. Mr. Bryant said he has no objection, but he pointed out that the Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup is looking at the issues raised by Ms. Burns. Commissioner Caride heard no objections, and she said the Long-Term Care Insurance Model Update (B) Subgroup should begin its work.

Commissioner Caride asked if there are any other issues the Task Force should consider for the year outside of the list provided to the Task Force. Ms. Burns said she would like the Task Force to look at innovative benefits in Medicare Supplement (Medigap). She said she has raised this before and feels these new or innovative benefits confuse consumers, cannot be compared with others, and dilute the simplification of standardized benefits. Commissioner Caride asked Ms. Burns to send details to Mr. Torian. Ms. Nakasone asked Ms. Burns if she could include examples of the type of benefits and rewards.

Harry Ting (Consumer Advocate Volunteer, Chester County Department of Aging Services – Apprise Program) said he has an issue that has disturbed State Health Insurance Assistance Program (SHIP) counselors for years; i.e., Medicare Part D insurers that drop a low premium plan and auto-enroll Medicare beneficiaries in their highest cost plan during annual open enrollment. Beneficiaries are sent the federal Center for Medicare & Medicaid’s (CMS’s) standard Annual Notice of Changes letter and standard CMS changes booklet, which combined are around 16 pages long. Unless beneficiaries read the documents carefully, they may not even understand that their plan has changed. Even if they do, they are only given information on how their new plan’s provisions and premiums differ from that of their old plan. They are not informed that there is a cheaper option offered by the company, whose premium is closer to the old premium.
Commissioner Caride asked Mr. Ting to also send details to Mr. Torian. Ms. Burns said the NAIC should take a position on the return of state regulation of Medicare Advantage, and she encouraged the states to learn more about and use the Senior Medicare Patrol (SMP) program, which is often housed in the SHIP, and one-third of SHIPs are in a state insurance department. She said these programs are the primary source in each state for frauds perpetrated against seniors.

2. Discussed Other Matters

Commissioner Caride asked if there are any other matters or issues to be raised before the Task Force. None were heard.

Having no further business, the Senior Issues (B) Task Force adjourned.

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