

Draft: 10/8/21

Senior Issues (B) Task Force
Virtual Meeting
October 6, 2021

The Senior Issues (B) Task Force met Oct. 6, 2021. The following Task Force members participated: Marlene Caride, Chair (NJ); Lori K. Wing-Heier, Vice Chair (AK); Jim L. Ridling represented by Anthony L. Williams (AL); 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 Michael Ross (DC); Trinidad Navarro represented by Fleur McKendell (DE); David Altmaier represented by Chris Struk (FL); John F. King represented by Teresa Winer (GA); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Weston Trexler (ID); Amy L. Beard represented by Rebecca Vaughan (IN); Vicki Schmidt represented by Shannon Lloyd (KS); Sharon P. Clark represented by Stephanie McGaughey-Bowker (KY); James J. Donelon represented by Ron Henderson (LA); Gary D. Anderson represented by Kevin Beagan (MA); Kathleen A. Birrane represented by Joy Hatchette (MD); Eric A. Cioppa represented by Sherry Ingalls (ME); Anita G. Fox represented by Renee Campbell (MI); Grace Arnold represented by Sherri Mortensen-Brown (MN); Chlora Lindley-Myers (MO); Troy Downing (MT); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Yuri Venjohn (ND); Eric Dunning (NE); Chris Nicolopoulos represented by Roni Karnis (NH); Barbara D. Richardson represented by Jack Childress (NV); Judith L. French represented by Laura Miller (OH); Glen Mulready represented by Andrew Schallhorn (OK); Jessica K. Altman represented by Shannen Logue (PA); Carter Lawrence represented by Brian Hoffmeister (TN); Cassie Brown represented by Chris Herrick (TX); Jonathan T. Pike represented by Jaakob Sundberg (UT); Scott A. White represented by Bob Grissom (VA); Mike Kreidler represented by Molly Nollette (WA); Mark Afable (WI); and Allan L. McVey represented by Ellen Potter (WV). Also participating were: Eric Anderson (IL); Bogdanka Kurahovic (NM); Martin Wojcik (NY); Andrew Dvorine (SC); Mary Block (VT); and Mavis Earnshaw (WY).

1. Adopted its 2022 Proposed Charges

Director Wing-Heier raised last minute language proposed by Birny Birnbaum (Center for Economic Justice—CEJ) to be added to the 2022 Proposed Charges. The language Mr. Birnbaum proposed would add a subsection to the 2022 Proposed Charges that reads, “[e]xamine the effects of structural racism and the COVID-19 pandemic on access, affordability, and outcomes for older insurance consumers.”

Mr. Birnbaum said he notes that the mission of the Task Force is to consider policy issues on insurance issues affecting older Americans. He said two of the most prominent policy issues affecting the insurance industry today are the effects of structural racism and the pandemic on access, affordability, and outcomes for insurance consumers, particularly insurance consumers in communities of color. He said he does not see any mention of these policy issues in the charges, so he suggests either adding to existing charges or creating a new charge to examine the impacts of structural racism and the pandemic on the specific subject matter of the Task Force, namely the impacts on older insurance consumers.

Ms. Miller asked if structural racism and the COVID-19 pandemic in terms of the new charge are to be considered in conjunction with each other or separate issues. Mr. Birnbaum said the intent of the charge is that there are two separate policy issues for consideration on their impact on older insurance consumers, and there is likely to be some overlap given that the pandemic has disproportionately affected communities of color. Mr. Lombardo said he wanted to make sure the new language is placed in the proper location and spot.

Director Wing-Heier made a motion, seconded by Ms. Nollette, to add Mr. Birnbaum’s proposed added language to the 2022 Proposed Charges and label it as Subsection H. The motion passed unanimously.

Bonnie Burns (California Health Advocates—CHA) offered language to include complimentary language about the Task Force being a clearing house for Medicare Supplement (Medigap), as well as Medicare Advantage. She said the last sentence in Subsection B in the Task Force charges states, “[a]ssists the states and serve as a clearinghouse for information on Medicare Advantage plan activity.” She said there should be a similar line for Medigap.

Mr. Trexler said he did not see the need for such language, as Medicare Advantage and Medigap are different in structure. He said the states administer Medigap, whereas Medicare Advantage is run by the federal Centers for Medicare and Medicaid Services (CMS); therefore, coordination between the CMS and the Task Force is necessary. Peggy Camerino (United American

Insurance Company) said she agreed with Mr Trexler, as the information on innovative benefits are already on the Task Force web page. Director Wing-Heier and Ms. Karnis also expressed that the 2022 Proposed Charges are sufficient without the additional language.

Ms. Mortensen-Brown made a motion, seconded by Director Wing-Heier, to adopt the 2022 Proposed Charges, as amended (Attachment **One**). The motion passed unanimously.

2. Heard a Presentation on the WA Cares Fund

Todd Dixon, Washington Deputy Commissioner for Consumer Protection, said the WA Cares Fund is struggling. He said the Washington Office of the Insurance Commissioner (WAOIC) is not part of the WA Cares Fund in terms of administration or implementation. He said the WAOIC is only involved because of the provision in the WA Cares Fund law that allows persons to be exempted from the law.

Mr. Dixon said the WA Cares Fund is run by the Aging and Long-Term Support Administration of the Washington State Department of Social and Health Services (DSHS). He said the WA Cares Fund is a universal long-term care (LTC) program. He said it is an earned benefit; i.e., only those who contribute are eligible. He said it is self-funded from worker contributions, reducing the need to raise taxes to pay for Medicaid Long-Term Services and Supports (LTSS) costs associated with the coming age wave. He said there is a lifetime maximum benefit of \$36,500; contributions begin Jan. 1, 2022, and benefits begin Jan. 1, 2025.

Mr. Dixon said workers contribute 0.58% of their wages, and premiums go into a dedicated trust fund that can only be used for this program. He said if a person has private long-term care insurance (LTCI), that person can either keep it and use it to supplement the WA Cares Fund \$36,500 benefit or apply to permanently withdraw from the WA Cares Fund Oct. 1, 2021, through Dec. 31, 2022. He said employers collect premiums from employee wages beginning Jan. 1, 2022. He said employers do not contribute to the WA Cares Fund. He said if an employee has LTCI and does not want additional coverage through the WA Cares Fund, the employee can opt out by applying through the Washington State Employment Security Department (ESD). He said employers do not process the opt-out applications; the ESD processes them. He said self-employed earners may opt into the WA Cares Fund through the ESD.

Mr. Dixon explained the vesting criteria for the WA Cares Fund. He said an individual must have earned their WA Cares Fund benefit by working and contributing: 1) at least 10 years at any point in their life without a break of five or more years; or 2) three of the last six years. They must also have worked and contributed at least 500 hours per year during those years. Mr. Dixon said to be eligible for benefits, the individual must require assistance with at least three activities of daily living (ADLs). He said the benefit is flexible; i.e., a person can: 1) spend up to \$36,500 on a combination of services and supports; 2) choose how they want to use it; and 3) hire a home-care aide, pay a family member, make home modifications, etc.

Mr. Dixon said federal employees are not included, the self-employed can opt in beginning Jan. 1, 2022, and the tribes have the option to opt in at any time. He said there are circumstances where certain people may be unable to claim benefits. He said under the current statute, people who live in border states and work in Washington will pay in but cannot access benefits unless they reside in Washington when they need care. He said people who will retire before they permanently vest will be unable to claim if they need care beyond three years of retiring, and people who move out of state will not be able to access benefits unless they return. He said the LTSS Trust Commission Benefit Eligibility Workgroup is considering policy options to address these issues.

Mr. Dixon said the WAOIC is not an administering agency for the WA Cares Fund by statute. He said the WAOIC acts as a partner as the official regulator for LTCI in Washington and acts as a partner to the WA Cares Fund by providing consumer protection. He said the main involvement of the WAOIC involves those seeking exemptions. He said workers who have their own private LTCI may apply for an exemption, and exemptions are permanent. If an exemption is approved, the worker will not have premiums assessed, and they forfeit their right to the benefit for life. He said workers seeking an exemption must apply themselves through the ESD; employers cannot apply on behalf of an employee. He said policies must meet the definition for LTCI in law for an exemption. He said under Washington law, LTCI is an insurance policy, contract, or rider that provides coverage for at least 12 consecutive months to an insured person if they experience a debilitating prolonged illness or disability. He said employees who apply for an exemption must attest that they have purchased LTCI before Nov. 1, 2021, and must provide notification of exemption to all current and future employers, and the only acceptable notification is a copy of the employee's approved exemption letter from the ESD.

3. 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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Adopted by the Executive (EX) Committee and Plenary, MM DD, YYYY

Adopted by the Health Insurance and Managed Care (B) Committee, MM DD, YYYY

Adopted by the Senior Issues (B) Task Force, Oct. 6, 2021

2022 Proposed Charges

SENIOR ISSUES (B) TASK FORCE

The mission of the Senior Issues (B) Task Force is to: 1) consider policy issues; 2) develop appropriate regulatory standards; and 3) revise, as necessary, the NAIC models, consumer guides, and training material on Medicare supplement insurance, long-term care insurance (LTCI), senior counseling programs, and other insurance issues that affect older Americans.

Ongoing Support of NAIC Programs, Products or Services

1. The **Senior Issues (B) Task Force** will:

- A. Develop appropriate regulatory standards and revisions, as necessary, to the NAIC models, consumer guides, and training material on Medicare supplement insurance, senior counseling programs, and other insurance issues that affect older Americans. Work with federal agencies to advance appropriate regulatory standards for Medicare supplement and other forms of health insurance applicable to older Americans. Review the *Medicare Supplement Insurance Minimum Standards Model Act* (#650) and the *Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act* (#651) to determine if amendments are required based on changes to federal law. Work with the federal Centers for Medicare & Medicaid Services (CMS) to revise the annual joint publication, *Choosing a Medigap Policy: A Guide to Health Insurance for People with Medicare*.
- B. Monitor the Medicare Advantage and Medicare Part D marketplace. Assist the states, as necessary, with regulatory issues. Maintain a dialogue and coordinate with the CMS on regulatory issues, including solvency oversight of waived plans and agent misconduct. Assist the states and serve as a clearinghouse for information on Medicare Advantage plan activity.
- C. Provide the perspective of state insurance regulators to the U.S. Congress (Congress), as appropriate, and the CMS on insurance issues, including those concerning the effect and result of federal activity on the senior citizen health insurance marketplace and regulatory scheme. Review and monitor state and federal relations with respect to senior health care initiatives and other impacts on the states.
- D. Monitor developments concerning State Health Insurance Assistance Programs (SHIPs), including information on legislation affecting the funding of SHIPs. Assist the states with issues relating to SHIPs and support a strong partnership between SHIPs and the CMS. Provide the perspective of state insurance regulators to federal officials, as appropriate, on issues concerning SHIPs.
- E. Monitor, maintain, and review, in accordance with changes to Model #651, a record of state approvals of all Medicare supplement insurance new or innovative benefits for use by state insurance regulators and others. Review state-approved new or innovative benefits and consider whether to recommend that they be made part of standard benefit plan designs in Model #651.
- F. Develop appropriate regulatory standards and revisions, as necessary, to the NAIC models, consumer guides, and training material on LTCI, including the study and evaluation of evolving LTCI product design, rating, suitability, and other related factors. Review the existing *Long-Term Care Insurance Model Act* (#640), the *Long-Term Care Insurance Model Regulation* (#641), the *Limited Long-Term Care Insurance Model Act* (#642), and the *Limited Long-Term Care Insurance Model Regulation* (#643) to determine their flexibility to remain compatible with the evolving delivery of long-term care (LTC) services and the evolving LTCI marketplace. Work with federal agencies, as appropriate.
- G. Examine examples of health-related financial exploitation of seniors and work with other NAIC committees, task forces, and working groups on possible solutions.
- H. Examine the effects of structural racism and the COVID-19 pandemic on access, affordability, and outcomes for older insurance consumers.

2. The **Long-Term Care Insurance (LTCI) Model Update (B) Subgroup** will:

- A. Review and update Model #640 and Model #641 to determine their flexibility to remain compatible with the evolving delivery of LTC services and the evolving LTCI marketplace.
- B. Update Model #642 and Model #643 to correlate with Model #640 and Model #641.
- C. Consider recommendations referred from the Long-Term Care Insurance (EX) Task Force and/or its subgroups.

NAIC Support Staff: David Torian

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