



Virtual Meeting

(in lieu of meeting at the 2021 Spring National Meeting)

REGULATORY FRAMEWORK (B) TASK FORCE

Thursday, March 25, 2021

4:00 – 5:00 p.m. ET / 3:00 – 4:00 p.m. CT / 2:00 – 3:00 p.m. MT / 1:00 – 2:00 p.m. PT

Summary Report

The Regulatory Framework (B) Task Force met March 25, 2021. During this meeting, the Task Force:

1. Adopted its March 18, 2021; March 1, 2021; and 2020 Fall National Meeting minutes, which included the following action:
 - a. Discussed comments received on the draft the [State] Pharmacy Benefit Manager Licensure and Regulation Model Act (PBM Model Act).
 - b. Adopted the PBM Model Act.
2. Adopted the report of the Accident and Sickness Insurance Minimum Standards (B) Subgroup, which has not met since December 2019 due to the COVID-19 public health emergency and the resignation of one of its co-chairs. Due to the recent appointment of a new co-chair, it is anticipated the Subgroup will resume its meetings in late April.
3. Adopted the report of the Employee Retirement Income Security Act (ERISA) (B) Working Group, which has not met since the 2020 Fall National Meeting. It is anticipated the Working Group will likely next meet sometime following the Spring National Meeting to discuss any updates regarding association health plans (AHPs), including the status of the appeal in *State of New York et al. v. U.S. Department of Labor et al.* The Working Group also could discuss the U.S. Supreme Court’s decision in *Rutledge v. the Pharmaceutical Care Management Association (PCMA)* with respect to any ERISA preemption issues. It then plans to adjourn into regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings.
4. Adopted the report of the Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group, which met March 10 and Jan. 28. During these meetings, the Working Group took the following action:
 - a. Heard from stakeholders—consumers, providers and plans—on their experiences with the implementation of and compliance with the MHPAEA’s mental health parity requirements.
 - b. Met in regulator-to-regulator session pursuant to paragraph 2 (pending investigations which may involve either the NAIC or any member in any capacity), paragraph 3 (specific companies, entities or individuals) and paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings.
5. Adopted the report of the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup, which has not met since October 2020 because it completed its work. The Subgroup could resume meeting to start work on a new 2021 charge to develop a white paper on issues related to the state regulation of certain pharmacy benefit manager (PBM) business practices.
6. Heard an update from the Center on Health Insurance Reforms’ (CHIR’s) work related to federal Affordable Care Act (ACA) implementation, recently enacted federal laws such as the federal No Surprises Act (NSA) and the federal American Rescue Plan Act (ARPA), and other issues of interest to state insurance regulators. The update included a discussion of the CHIR’s efforts to assess the impact of the extended special enrollment periods (SEPs) into the federal health insurance exchanges, as



provided in the ARPA, on access and affordability of coverage and how it will be implemented. The CHIR is continuing its work to track state regulatory reforms affecting the individual market, such as the ACA's Section 1332 waiver program, including whether the states are looking at other options, in addition to reinsurance programs, in light of the ARPA that could positively affect the affordability of comprehensive coverage. The CHIR is also continuing its work of tracking state regulatory approaches to the COVID-19 pandemic. The presentation also highlighted some of the CHIR's future work on network adequacy and standardized health plans and non-comprehensive coverage arrangements.

7. Heard a presentation on the NSA. The presentation highlighted the NSA's scope, including what types of plans it covers and where its protections apply. The NSA does not apply to short-term plans and excepted benefits plans. It also does not apply to ground ambulance services, but it does apply to air ambulance services. The presentation described how the NSA protects patients from balance bills by requiring that patients be held responsible for in-network cost sharing only and barring providers from sending or collecting a bill for amounts other than in-network cost sharing. The presentation also discussed a key component of the NSA—determining the payment amount for out-of-network care when there is a payment dispute. The presentation highlighted the NSA's enforcement mechanisms and the role that the states will have. Lastly, the presentation discussed what questions remain with the NSA with respect to states that currently have balance billing laws and those that do not. The presentation also discussed next steps regarding the NSA, including the anticipated federal regulations.
8. Heard a discussion of the recent decision in *Rutledge v. the Pharmaceutical Care Management Association (PCMA)* and its potential effect on the ability of state insurance regulators to regulate certain PBM business practices. The Task Force anticipates more discussion of the Rutledge case as part of the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup's future work to develop a white paper on state options with respect to regulating PBM business practices and the ERISA (B) Working Group's discussion of the case's potential impact with respect to ERISA preemption.

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