

*Virtual Meeting**(in lieu of meeting at the 2021 Summer National Meeting)***REGULATORY FRAMEWORK (B) TASK FORCE**

Wednesday, July 28, 2021

11:00 a.m. – 12:00 p.m. ET / 10:00 – 11:00 a.m. CT / 9:00 – 10:00 a.m. MT / 8:00 – 9:00 a.m. PT

Meeting Summary Report

The Regulatory Framework (B) Task Force met July 28, 2021. During this meeting, the Task Force:

1. Adopted its June 15 and March 25 minutes, which included the following action:
 - A. Discussed and adopted a new 2021 charge for the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup to develop a white paper on issues related to the state regulation of certain pharmacy benefit manager (PBM) business practices and the effect, if any, of the recent U.S. Supreme Court decision in *Rutledge v. the Pharmaceutical Care Management Association (PCMA)* on these current and emerging state laws and regulations regulating such business practices. The white paper will also examine the role PBMs, pharmacy services administrative organizations (PSAOs), and other prescription drug supply chain entities play in the provision of prescription drug benefits.
2. Adopted the report of the Accident and Sickness Insurance Minimum Standards (B) Subgroup, including its July 12 and June 7 minutes. During these meetings, the Subgroup took the following action:
 - A. Established a new public comment period ending July 2 to receive comments on Sections 1–7 of the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act (#171)*.
 - B. Began discussion of the comments received on Sections 1–7 of Model #171 received by the July 2 public comment deadline. The Subgroup anticipates meeting approximately every two weeks to continue its discussions of the comments received.
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. The Working Group plans to meet July 30 in to discuss any updates to the *Health and Welfare Plans Under the Employee Retirement Income Security Act: Guidelines for State and Federal Regulation (ERISA Handbook)* related to the U.S. Supreme Court's decision in *Rutledge* with respect to ERISA preemption of state laws regulating PBM business practices. The Working Group will also discuss the *Rutledge* decision in relation to the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup's new 2021 charge to develop a white paper discussing state laws regulating PBM business practices. Following these discussions, the Working Group 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, including its July 20 and April 21 minutes. During these meetings, the Working Group took the following action:
 - A. Received an update from the U.S. Department of Labor (DOL) and the federal Centers for Medicare & Medicaid Services (CMS) on their work related to the recently enacted federal Consolidated Appropriations Act of 2021 (CAA), which amended the MHPAEA to provide important new protections. In anticipation of new 2021 charges from the Special (EX) Committee on Race and Insurance, the Working Group also discussed equity and diversity in the mental health/substance use disorder (MH/SUD) treatment context. The Working Group plans to meet Aug. 5 to hear a provider perspective on mental health parity.

- 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 plans to resume meeting after the Summer National Meeting to work on a new 2021 charge to develop a white paper on issues related to the state regulation of certain PBM business practices. The white paper will also examine the role PBMs, PSOs, and other prescription drug supply chain entities play in the provision of prescription drug benefits.
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 recent publications, including a 50-state survey of state employee benefit plans and efforts to restrain health care costs and state actions to expand telemedicine access during COVID-19 and future policy considerations. The CHIR is researching and expects to release issue briefs or blogs on standardized plans, limited plan sales, state "Easy Enrollment" programs, efforts by select state-based marketplaces (SBMs) to improve health equity, and small group health insurance market trends. The CHIR presentation also highlighted some of the CHIR's future work related to NSA implementation and technical assistance available to the states and its ongoing work related to network adequacy. The CHIR will also be looking more closely at health care cost containment through initiatives such as federal and state public option programs and the role of ERISA and its impact on state efforts to address cost containment with respect to employer plans.
7. Heard a presentation on the NSA's interim final rules and implications for the states. The presentation provided an overview of the NSA's scope, including what types of plans it covers and where its protections apply. The NSA's interim final rules were issued July 1 with an effective date of Sept. 13. The interim final rules include provisions focused on both patients and regulated entities. The patient-focused provisions outline how patients can calculate cost-sharing, include notice-and-consent waivers provisions, and establish a consolidated complaints process. The regulated entities-focused provisions outline how to calculate the qualifying payment amount and include disclosure requirements and provisions related to communications between insurers and providers. The interim final rules confirm that state departments of insurance (DOIs) are the primary enforcers of provisions that apply to insurers and fully insured health products. The U.S. Department of Health and Human Services (HHS) will enforce the NSA's requirements in states that fail to substantially enforce the law. The DOL will enforce the NSA's provisions for self-funded group health plans. The same enforcement framework is established with respect to providers, including air ambulances. As noted in the presentation, the NSA is silent on which state agency is to enforce the NSA's provider provisions. The presentation also highlighted key considerations for the states, particularly that state laws can be more protective of consumers if the state law does not "prevent the application of federal law." It is anticipated that the federal government will issue additional NSA rules in 2021, including federal rules on the independent dispute resolution process (interim final rule) and enforcement and air ambulance data reporting (proposed rule). The presentation noted that additional federal rulemaking will occur over time on other NSA requirements, such as accurate provider directories, gag clauses, and PBM reporting requirements. However, these rules will not be promulgated prior to the NSA's 2022 effective date.

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