

*Virtual Meeting
(in lieu of meeting at the 2021 Fall National Meeting)*

REGULATORY FRAMEWORK (B) TASK FORCE

Tuesday, November 30, 2021

Meeting Summary Report

The Regulatory Framework (B) Task Force met Nov. 30, 2021. During this meeting, the Task Force:

1. Adopted its Nov. 9 and Summer National Meeting minutes, which included the following action:
 - A. Adopted its 2022 proposed charges.
2. Adopted the report of the Accident and Sickness Insurance Minimum Standards (B) Subgroup, including its Nov. 1, Oct. 4, Sept. 20, Aug. 23, Aug. 9, and July 26 minutes. During these meetings, the Subgroup took the following action:
 - A. Continued discussion of revisions to Sections 1–7 of the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act* (#171) based on the comments received by the July 2 public comment deadline.
 - B. Heard presentations on the products covered under Model #171. The presentations specifically discussed: a) the different types of products covered under Model #171; b) how they pay benefits; c) what they are designed to do; d) how they are marketed; and e) how they are sold. The Subgroup also heard a consumer perspective on these products.
3. Adopted the report of the Employee Retirement Income Security Act (ERISA) (B) Working Group, including its Oct. 8 and July 30 minutes. During these meetings, the Working Group took the following action:
 - A. Discussed potential 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 vs. the Pharmaceutical Care Management Association (PCMA)* with respect to any ERISA preemption. The Working Group also discussed 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 pharmacy benefit manager (PBM) business practices. Following these discussions, the Working Group adjourned into regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings.
 - B. Reviewed and discussed an initial draft summary of the *Rutledge v. Pharmaceutical Care Management Association* decision. The Working Group agreed that the initial draft summary needed to be revised. The Working Group plans to review and discuss a revised draft summary in early 2022.
4. Adopted the report of the Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group, including its Aug. 5 minutes. During this meeting, the Working Group took the following action:
 - A. Heard presentations discussing the provider perspective on mental health parity.
5. Adopted the report of the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup, which has not held an open meeting since October 2020 because it completed its initial work to develop a new NAIC model regulating PBMs. The proposed new NAIC model did not receive sufficient votes for adoption during the Executive (EX) Committee and Plenary meeting at the Summer National Meeting. The

Subgroup met Nov. 8 and Sept. 5, 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.

6. Heard a presentation on the federal No Surprises Act's (NSA's) interim final rules and implications for the states. The presentation provided an overview of the NSA and detailed the provisions included in the interim final rules and proposed rules issued to date implementing the NSA. The interim final rules issued July 1 include provisions focused on both patients and regulated entities. 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. The federal agencies charged with implementing the NSA issued proposed rules Sept. 10 concerning air ambulance providers. The federal agencies implementing the NSA issued another set of interim final rules Sept. 30 focusing on the independent dispute resolution (IDR) process. Other provisions of this rule include provisions on good-faith cost estimates for uninsured patients and a patient-provider dispute resolution process when cost estimates are wrong. The presentation also discussed the federal method for determining the out-of-network provider payment amount and the various state out-of-network provider payment determination methods. The presentation highlighted various NSA reporting provisions intended to try to determine the NSA's effect on various health care-related factors, such as its effect on health care costs, provider networks, and provider consolidation. The presenters noted that for the states having balance billing protection laws prior to the enactment of the NSA, analyses trying to determine those laws' effect on similar health care-related factors is limited. Depending on the state approach taken to determine payment amount, some studies of these state laws indicate little impact, while others indicate mixed impacts.
7. Discussed the expanded scope of external review under the NSA, the implications of this expanded scope on the *Uniform Health Carrier External Review Model Act* (#76), and possible steps the Task Force can take to address the issue. The Task Force decided to set up an ad hoc group to work with NAIC staff to discuss the possible steps to address the issue and make recommendations to the Task Force sometime in late January or early February 2022.

[RFTF Summary](#)