

December 8, 2022

Commissioner Marlene Caride, Chair

NAIC Senior Issues Task Force

Attn: David Torian, SITF Counsel and Health Policy Analyst

Re: NAIC Draft letters to Congress and DOL

Dear Commissioner Caride:

California Health Advocates has deep experience with consumers caught between COBRA benefits and Medicare. We have presented on this issue in several different venues of the NAIC over the last five years. We reported on the problems of older former employees who were caught in the complex conflict between being eligible for Medicare when receiving benefits under COBRA. We are deeply disappointed that the Task Force has decided against any revision of the offending language in the NAIC Coordination of Benefits Model Act that allows insurers to refuse to pay benefits for secondary coverage based on Medicare eligibility.

While there is no doubt that Medicare is primary when an eligible beneficiary is enrolled in a COBRA plan and eligible for Medicare at the same time, the Model Act provides insurers an iron clad justification to deny payment of secondary benefits based on eligibility for Medicare Part B alone. There are no other medical coverage situations described in that section of the Model Act that allow an insurer to refuse payment of medical benefits.

As long as this language remains in the Model the NAIC is actively allowing insurers to continue discriminating against a person solely on the basis of their eligibility for Medicare. We hope that DOL and CMS each make revisions to their processes that will resolve some of the conflicts between these two federal medical benefit programs, but the law will still allow insurers to continue denying benefit payment to Medicare eligible individuals based on that one provision in the NAIC Model or a similar provision of state law.

We ask that the Task Force reconsider its decision and make a simple change to the Model Act that will begin to correct the harm that occurs to older individuals when they leave their current employment.

Sincerely,

Bonnie Burns