

Draft: 2/9/22

Senior Issues (B) Task Force
Virtual Meeting
February 8, 2022

The Senior Issues (B) Task Force met Feb. 8, 2022. The following Task Force members participated: Marlene Caride, Chair (NJ); Jon Pike, Vice Chair (UT); Lori K. Wing-Heier represented by Sarah Bailey (AK); Jim L. Ridling represented by Willard Smith (AL); Alan McClain represented by Carroll Astin (AR); Evan G. Daniels represented by Erin Klug (AZ); Ricardo Lara represented by Tyler McKinney (CA); Michael Conway represented by Peg Brown (CO); Andrew N. Mais represented by Paul Lombardo (CT); Karima M. Woods represented by Howard Liebers (DC); Trinidad Navarro represented by Susan Jennette (DE); David Altmaier represented by Chris Struk (FL); John F. King represented by Matthew Padova (GA); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen (IA); Dean L. Cameron represented by Kathy McGill (ID); Amy L. Beard represented by Rebecca Vaughan (IN); Vicki Schmidt represented by Julie Holmes (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 Theodore Patton (MN); Chlora Lindley-Myers (MO); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Yuri Venjohn (ND); Eric Dunning and Martin Swanson (NE); Barbara D. Richardson represented by Jack Childress (NV); Judith L. French represented by Tynesia Dorsey (OH); Jessica K. Altman represented by Michael Gurgiolo (PA); Elizabeth Kelleher Dwyer represented by Patrick Smock (RI); Larry D. Deiter represented by Jill Kruger (SD); Carter Lawrence represented by Brian Hoffmeister (TN); Cassie Brown represented by Dannette Smith (TX); Scott A. White represented by Bob Grissom (VA); Michael S. Pieciak represented by Mary Block (VT); Mike Kreidler represented by Molly Nollette (WA); Nathan Houdek represented by Jennifer Stegall (WI); and Allan L. McVey (WV). Also participating were: Eric Anderson (IL); Kay Warrington (MS); Ingrid Marsh (NH); Bogdanka Kurahovic (NM); Martin Wojcik (NY); Glen Mulready (OK); Andrew Dvorine (SC); and Mavis Earnshaw (WY).

1. Discussed the CMS's Proposed Rule on Stricter Marketing Guidelines for MA Plans

Commissioner Caride said the purpose of this Task Force meeting is to examine the proposed rule promulgated by the Centers for Medicare & Medicaid Services (CMS) to impose stricter marketing guidelines for Medicare Advantage (MA) plans. She said this meeting is not to target MA plans but to focus on the deceptive marketing advertisements to sell MA plans. She said the Task Force has heard from state insurance regulators, most notably from Louisiana and Nebraska, regarding consumers being switched from their original plans after either inquiring in response to ads or receiving cold calls from these marketers.

Mr. Swanson gave some background on what he has heard from Nebraska and other states regarding these solicitations. He said Nebraska has a very good working relationship with its regional CMS representatives and shares information with other states. He said these issues have been raised and are being examined by the Improper Marketing of Health Insurance (D) Working Group; and because many of these Working Group calls are regulator-only, frank discussions are had with the CMS and the federal Center for Consumer Information and Insurance Oversight (CCIIO). He said some of these calls have died down after open enrollment closed, but MA plan open enrollment does not end for another month.

Commissioner McVey said he has seen these advertisements; they are somewhat misleading at the very best, and they are close to fraudulent at the very worst. He said he would like to address this situation; even though he has seen one of the ads revamped, it is still not a good situation, and more complaints will come.

Mr. Henderson said one of the biggest issues is that those third-party callers who are not necessarily agents can call seniors asking if they would like to change their plan, and the next thing the senior discovers is that they have been switched into another plan, and that new plan does not even take the senior's doctor. He related a story he told before about being present when a call came in to a senior; when he took the phone to ask for the caller's license, the caller hung up. He said Commissioner Schmidt, the Director of the Louisiana State Health Insurance Assistance Program (SHIP), is constantly making changes on behalf of seniors who have been moved out of their plans. He said many seniors are being incentivized to make changes because the marketing caller tells them they are not getting all they deserve when in fact they are getting what they need. He said it must be emphasized to the CMS that these third-party marketing callers are using unlicensed persons to make the calls and then hand the call over to a licensed person.

Commissioner Caride asked the Task Force if it would agree to comment on the CMS's proposed rule and any objections to commenting. Mr. Swanson said the regional CMS personnel he has engaged with would appreciate input from the NAIC to get the attention of the officials in the District of Columbia. Commissioner Caride noted that both Idaho and Missouri concur with Mr. Swanson's comments. She asked if there are any interested parties that wish to comment.

Bonnie Burns (California Health Advocates—CHA) said the CHA submitted a letter to the Task Force laying out its position and what it has commented to the CMS. She said there has been a massive increase in the number of people being switched to plans they either did not want or were not appropriate for them. She said she has seen those dually eligible being moved from their non-premium plans to plans with premiums and plans that have co-payments when they should not have any co-payments. She said the CMS's own statistics show there has been a jump in complaints. She said in 2020, the CMS received a total of 15,497 complaints related to marketing; and in 2021, excluding December, the CMS received 39,617 complaints. She said this is an indication of companies fighting for market share and agents and brokers fighting for sale commissions.

Ms. Burns said one area of great concern is that there is no indication to how any enforcement is taking place. She said some states have memorandums of understanding (MoUs) with the CMS so there would be a transfer of information, but when an agent or a broker where these actions are taking place is identified, there does not appear to be any formal process in the CMS proposed rule for these agents and brokers who are licensed to be disciplined through the states' licensing and enforcement system. She said the CMS is proposing a disclaimer to be added to websites and advertisements stating that the consumer is not being given all the information about plans available to them. She said such a disclaimer is ineffective, and she said she proposed in the letter to the Task Force what would be an adequate disclosure to consumers. She said SHIPs are not even referenced in the proposed rules, and she strongly believes SHIPs must be included. She also said the proposed rule should require agents and brokers to sign an attestation to show that what is being offered and sold is an improvement to the consumer from what they are already enrolled in. She said this already exists for Medicare Supplement plans, so it should apply to MA plans.

Mr. Henderson pointed out that most of the SHIPs are in states' Aging and Elderly offices, so if there is no connection to the state insurance departments, many of these issues are going unheard and are not being reported to insurance departments.

Harry Ting (Health Consumer Advocate) said he is an NAIC consumer representative and SHIP counselor. He said he had a client who was cold called, told the caller she did not want to change but was changed to a new plan that did not fit her needs. He said when he asked the new plan who the producer was who called the client and switched her to the new plan, they said they did not know. He said these marketing organizations have very little incentive to discipline their people, and when he asked the client if she would like to file a complaint, she was reluctant to do so.

Dr. Ting said he agrees with Ms. Burns that the CMS proposed rule is not impactful enough. He proposed that the CMS use its complaint tracking module that counted over 39,000 complaints in 2021 to enter a star system calculation and assign a certain number of stars to those plans. He said it would make the marketing organization more sensitive and willing to take action to reduce complaints.

Commissioner Mulready said the Oklahoma Insurance Department has received dozens and dozens of calls and complaints, and it is supportive of letting the CMS know what states are experiencing. Ms. Burns said holding plans or marketing organizations accountable is laudable, but it does no good if the complaints and information are not getting to the states' departments of insurance (DOI), and in turn, there is no action on a state level holding these actual sellers accountable.

Commissioner McVey made a motion, seconded by Commissioner Pike, that the Task Force submit comments in response to the CMS's proposed rule on stricter marketing guidelines for MA plans. The motion passed unanimously.

Commissioner McVey asked about the process of submitting comments. Commissioner Caride asked David Torian (NAIC) to explain. Mr. Torian said he would like comments to be submitted by week's end, or Monday, Feb. 14 at the latest. He said he would collate the comments into a single letter for the Task Force to adopt via an e-vote. He reminded the Task Force that time is of the essence, as the deadline for comments to the CMS is March 7, and any comments adopted by the Task Force will need approval from the Government Relations (EX) Leadership Council. Commissioner Caride asked if there are any issues or problems with that process, and none were heard.

Having no further business, the Senior Issues (B) Task Force adjourned.

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