

Draft Pending Adoption

Draft: 3/23/23

Senior Issues (B) Task Force
Louisville, Kentucky
March 22, 2023

The Senior Issues (B) Task Force met in Louisville, KY, March 22, 2023. The following Task Force members participated: Marlene Caride, Chair (NJ); Larry D. Deiter, Vice Chair (SD); Lori K. Wing-Heier represented by Sarah Bailey (AK); Mark Fowler represented by Willard Smith (AL); Barbara D. Richardson represented by Erin Klug (AZ); Ricardo Lara represented by Tyler McKinney (CA); Andrew N. Mais represented by Paul Lombardo (CT); Trinidad Navarro represented by Frank Pyle (DE); Michael Yaworsky represented by Bryan Peters (FL); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Shannon Hohl (ID); Vicki Schmidt represented by LeAnn Crow (KS); Sharon P. Clark represented by Angi Raley (KY); James J. Donelon represented by Ron Henderson (LA); Gary D. Anderson represented by Kevin Beagan (MA); Kathleen A. Birrane represented by Joy Hachtette (MD); Timothy N. Schott represented by Marti Hooper (ME); Anita G. Fox represented by Renee Campbell (MI); Grace Arnold represented by T.J. Patton (MN); Chlora Lindley-Myers represented by Carrie Couch (MO); Mike Chaney (MS); Troy Downing represented by Mark Mattioli (MT); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Santana Edison (ND); Eric Dunning represented by Maggie Reinert (NE); Scott Kipper (NV); Judith L. French represented by Laura Miller (OH); Glen Mulready represented by Andrew Schallhorn (OK); Michael Humphreys (PA); Jon Pike represented by Tanji J. Northrup and Tomasz Serbinowski (UT); Scott A. White represented by Julie Blauvelt (VA); Kevin Gaffney represented by Anna Van Fleet (VT); Mike Kreidler represented by Todd Dixon (WA); Nathan Houdek represented by Jennifer Stegall (WI); and Allan L. McVey represented by Erin K. Hunter (WV).

1. Adopted its 2022 Fall National Meeting Minutes

Lombardo made a motion, seconded by Dixon, to adopt the Task Force's Dec. 13, 2022, minutes (see *NAIC Proceedings – Fall 2022, Senior Issues (B) Task Force*). The motion passed unanimously.

2. Discussed the Task Force's Plans for 2023

Commissioner Caride asked members if they had any comments regarding the materials on the possible issues and topics the Task Force may want to consider in 2023. None were heard. Commissioner Caride asked if any interested state insurance regulators or interested parties had any comments.

Bonnie Burns (California Health Advocates—CHA) said she had two issues of importance. She said the first is an issue she has raised for many years, which is the conflict between Medicare and the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) rules that has led to some confusion about which system and set of rules govern eligibility for coverage, as well as how the responsibility for the payment of health care benefits for eligible individuals is determined.

Burns encouraged the Task Force to reconsider editing the *Coordination of Benefits Model Regulation* (#120). She said the exception pertaining to people who are eligible or who could be eligible for Medicare benefits is unfairly discriminatory and makes no sense. She said no one has been able to tell her where this language came from or why it was put into the model.

Burns cited a U.S. Supreme Court case, *Geissal v. Moore Medical Corp.*, 524 U.S. 74 (1998), as where this COBRA and Medicare issue may have begun. She said the Supreme Court held that an employer may not deny continuation coverage under COBRA to a qualified beneficiary who is covered under another group health plan at the time he makes his COBRA election.

Draft Pending Adoption

Burns said the NAIC should delete the exception for Medicare Part B in Model #120, as there is no rationale for this exception in the NAIC historical record, and it unfairly penalizes and discriminates against Medicare beneficiaries. She said the action specified in the exception, “is or could have been covered” produces a result that is expressly prohibited in the same subsection for any other form of health benefits. She recommended changes to parts of Section 5D of Model #120.

Burns said the second issue is the disbanding of the Long-Term Care Insurance Model Update (B) Subgroup. She said it was disappointing that the Subgroup was disbanded, as there are products in the current marketplace that models do not address. She said the majority of products in the marketplace are now life and annuity plans with long-term care (LTC) components attached. She said these products are complicated and confusing to consumers, and agents and state insurance regulators do not know the pricing of these plans or how these benefits are being used. She said there have to be better disclosures and information about these products.

Burns also suggested that the NAIC needs to have better relationships with State Health Insurance Assistance Program (SHIP) and Senior Medicare Patrol (SMP) offices. She said the SMP was created to empower and assist Medicare beneficiaries, their families, and caregivers in preventing, detecting, and reporting health care fraud, errors, and abuse through outreach, counseling, and education. She said it would be good for state insurance regulators to get to know their SHIPs and SMPs and develop an ongoing relationship.

Commissioner Caride asked if there were any other comments. Serbinowski said the *Long-Term Care Insurance Model Act* (#640) and the *Long-Term Care Insurance Model Regulation* (#641) either need to be opened and edited or a new model needs to be created to address these combo products. He said many filings are likely in violation of laws and regulations, but nothing is being done. He said he has seen filings of life products with attained age ratings and an LTC rider attached, and these products are filed as life, but the LTC models make it clear that an attained age rating is not permissible. He also raised concerns about conversions, suitability, and the fact that the LTC models have zero language about annuities. He said these new products will come to a head within a decade in terms of payouts, and now is the time to address them; thus, this warrants the opening of the LTC models or the creation of a new model.

Commissioner Caride asked for further comments, and none were heard. She asked if anyone had any other issues or matters they wished to discuss or were seeing in their states. None were heard.

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

[SITF 2023 Spring National Minutes](#)