

Draft Pending Adoption

Draft: 8/12/20

Senior Issues (B) Task Force
Virtual Summer National Meeting
August 3, 2020

The Senior Issues (B) Task Force met via conference call Aug. 3, 2020. The following Task Force members participated: Marlene Caride, Chair (NJ); Lori K. Wing-Heier, Vice Chair (AK); Jim L. Ridling represented by Steve Ostlund (AL); Alan McClain represented by William Lacy (AR); 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 Fleur McKendell (DE); David Altmaier (FL); John F. King (GA); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Sonya Sellmeyer (IA); Dean L. Cameron represented by Weston Trexler (ID); Stephen W. Robertson represented by Rebecca Vaughan (IN); Vicki Schmidt represented Craig Van Aalst (KS); James J. Donelon represented by Ron Henderson (LA); Gary Anderson represented by Ruth Moritz (MA); Kathleen A. Birrane represented by Fern Thomas (MD); Eric A. Cioppa represented by Marti Hooper (ME); Anita G. Fox represented by Renee Campbell (MI); Steve Kelley represented by Grace Arnold (MN); Chlora Lindley-Myers (MO); Mike Causey represented by Mary Jo Wegenast (NC); Jon Godfread represented by Chrystal Bartuska (ND); Bruce R. Ramge (NE); Chris Nicolopoulos represented by Maureen Belanger (NH); Russell Toal represented by Paige Duhamel (NM); Barbara D. Richardson represented by Jack Childress (NV); Jillian Froment represented by Laura Miller (OH); Glen Mulready represented by Ron Kreiter (OK); Andrew R. Stolfi represented by Gayle L. Woods (OR); Jessica K. Altman (PA); Larry D. Deiter represented by Jill Kruger (SD); Hodgen Mainda represented by Vickie Trice (TN); Kent Sullivan represented by Doug Danzeiser (TX); Todd E. Kiser represented by Jaakob Sundberg (UT); Scott A. White represented by Bob Grissom (VA); Mike Kreidler represented by Michael Bryant (WA); Mark Afable represented by Jennifer Stegall (WI); and James A. Dodrill (WV).

1. Adopted its March 3 and 2019 Fall National Meeting Minutes

Director Lindley-Myers made a motion, seconded by Mr. Henderson, to adopt the Task Force's March 3 (Attachment One) and Dec. 7, 2019, (*see NAIC Proceedings – Fall 2019, Senior Issues (B) Task Force*) minutes. The motion passed unanimously.

2. Heard a Federal Legislative Update

David Torian (NAIC) provided a federal legislative update, including an update on funding for the State Health Insurance Assistance Program (SHIP) and the pending release of the Federal Interagency Task Force on Long-Term Care Insurance's final report.

3. Discussed Other Matters

Director Wing-Heier asked Task Force members about their experience with seniors and COVID-19 and any information that we might not be aware of in respect to the pandemic. She said there are some incidental and anecdotal stories that seniors may be putting off health care needs or the need to go into a long-term care (LTC) facility. She asked whether there is anything from an insurance perspective that we should be taking a look at this time.

Commissioner Caride said New Jersey has managed to control the crisis somewhat, but it is watching as the numbers are beginning to come up again as so many states are seeing of resurgence of it. She said she has heard on numerous occasions about seniors who are refusing to go to nursing homes and not wanting to go to the hospital with the concern of getting COVID-19, even if their health requires them to see their doctors.

Commissioner Caride said New Jersey and hospitals are doing a push in marketing and advertising to seniors that they are open for business outside of dealing with a pandemic. She said the numbers have gone down drastically, and it is time for these seniors to come back for either an elective procedure they put off or just for a regular checkup. She said there is a lot of work to be done to encourage seniors not to be afraid to go to their doctors or to go to the hospital. She said one area of promotion is telehealth and telemedicine.

Bonnie Burns (California Health Advocates—CHA) highlighted fraud and COVID-19 among seniors, and she encouraged communication among all parties about any and all fraud circulating. She also said there is the problem with people who are getting home care under long-term care insurance (LTCI) policies. She said these people have family living in their homes who are able and available caregivers, but these family caregivers are excluded under almost all of the LTCI policies. She said the pandemic has increased the concern about an outside caregiver, and many are now going without care. She encouraged state

Draft Pending Adoption

insurance regulators and companies to look at the flexibility of having a family caregiver included on a month to month basis during this national emergency.

Director Wing-Heier asked Ms. Burns if there is anything state insurance regulators can do when they speak with carriers about these concerns. Ms. Burns replied that it is important for state insurance regulators to make carriers aware of this fraud and these problems and encourage them to make changes or alternatives during this national emergency.

Commissioner Caride said regarding fraud, she had heard about companies going and taking swabs of seniors and charging the seniors' insurance. She said she knows the Task Force has talked about different things that are going on around the country regarding seniors. She said that is our watchlist, and it is interesting to hear how other states are handling different situations.

Ms. Burns raised the concern with a lot of emphasis on medical services that plans are able to provide, and while they may be valuable for people who qualify for it, it is not universally applicable to every senior. She said she is seeing a lot of evidence that agents are telling people to sign up for these plans, telling them about medical events and home delivered meals, for instance. But only a very small percentage of people would qualify and actually get that benefit, and that information is not communicated. Ms. Burns said there are all kinds of ads running on TV right now that emphasize these non-medical benefits to the broad population.

Mr. Henderson said he has noticed an uptick in advertisements enticing seniors with plans that offer additional benefits. He said his department is receiving more and more calls from seniors who have called the number of the advertisement and find out that they have been switched to another plan without their knowledge or consent. He said his department is spending a lot of time correcting these changes. He cited as an example, a senior who, unbeknownst to her, was removed from her company retirement plan and put into a Medicare Advantage plan.

Ms. Brown said she is seeing these ads, and they are on many cable channels and often on some specific channels. She said she cannot recall the names of the specific ads that cater to seniors. She said these ads are not from Colorado, but they are being beamed into Colorado, and its department receives calls every day about these ads.

Commissioner Caride asked if there was anything else anyone wished to discuss.

Marcy Buckner (National Association of Health Underwriters—NAHU) raised the issue of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), and a senior may end up in a COBRA plan and then be penalized that 10% for life for going into COBRA when they should have been on Medicare. She said NAHU is working with Congressman Kurt Schrader of Oregon on a bill he has co-sponsored to allow seniors enrolled in COBRA coverage to transition to Medicare Part B without a penalty, the same as seniors who remain on similar employer-sponsored coverage, by providing for a one-time special enrollment period. She said there is hope that the bill could be brought into a larger Medicare bill later this year. She said she wanted to raise this with the Task Force, and if anyone wants additional information about this bill and topic, she would be happy to share it with the Task Force.

Ms. Burns said she has been dealing with this issue of COBRA and Medicare for three years. She said there are conflicts that exist regarding Medicare eligible individuals who have COBRA protection and Medicare eligible individuals who work for small employers. She said these conflicts between Medicare and COBRA rules have led to confusion about which system and which set of rules governs eligibility for coverage and how responsibility for payment of health care benefits for eligible individuals is determined. She said these conflicts have led to some Medicare eligible individuals being subject to Medicare premium penalties and delays in coverage, mistakes in benefit payment, and claims for recovery of mistakenly paid COBRA benefits. She said the U.S. Department of Labor (DOL) has made efforts to address this matter through notices, but it is far from perfect. She also said the Schrader bill is in the right direction, but it does not deal with late enrollment. She said there needs to be a change in the *Coordination of Benefits Model Regulation* (#120) to address health benefits based upon the model. She has provided the Task Force with language for the model, and she hopes the Task Force will seriously consider this very complex issue.

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

W:\National Meetings\2020\Summer\TF\SR\08-SITFmin.docx

Draft: 12/10/19

Senior Issues (B) Task Force
Austin, Texas
December 7, 2019

The Senior Issues (B) Task Force met in Austin, TX, Dec. 7, 2019. The following Task Force members participated: Lori K. Wing-Heier, Chair (AK); Marlene Caride, Vice Chair (NJ); Jim L. Ridling represented by Steven Ostlund (AL); Allen W. Kerr represented by Bill Lacy (AR); Andrew N. Mais represented by Paul Lombardo (CT); Trinidad Navarro represented by Fleur McKendell (DE); David Altmaier represented by James Dunn (FL); John F. King (GA); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Wes Trexler (ID); Robert H. Muriel represented by Mike Chrysler (IL); Stephen W. Robertson represented by Alex Peck (IN); Vicki Schmidt (KS); James J. Donelon represented by Ron Henderson (LA); Gary Anderson represented by Kevin Beagan (MA); Al Redmer Jr. represented by Paula Keen (MD); Eric A. Cioppa represented by Marti Hooper (ME); Anita G. Fox represented by Kevin Dyke (MI); Steve Kelley represented by Grace Arnold (MN); Chlora Lindley-Myers represented by Angela Nelson (MO); Mike Chaney represented by Daniel Bradshaw (MS); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Chrystal Bartuska (ND); Bruce R. Range represented by Martin Swanson (NE); John G. Franchini represented by Margaret Pena (NM); Barbara D. Richardson represented by Dave Cassetty (NV); Jillian Froment represented by Laura Miller (OH); Glen Mulready represented by Ron Kreiter (OK); Andrew Stolfi represented by Tashia Sizemore (OR); Jessica Altman (PA); Larry Deiter represented by Jill Kruger (SD); Hodgen Mainda represented by Brian Hoffmeister (TN); Kent Sullivan represented by Raja Malkani (TX); Todd E. Kiser represented by Shelley Wiseman (UT); Scott A. White represented by Julie Blauvelt (VA); Mike Kreidler represented by Mike Bryant (WA); Mark Afable represented by Jennifer Stegall (WI); and James A. Dodrill represented by Ellen Potter (WV).

1. Adopted its Oct. 16, Sept. 24 and Summer National Meeting Minutes

Mr. Ostlund made a motion, seconded by Commissioner Caride, to adopt the Task Force's Oct. 16 (Attachment One), Sept. 24 (Attachment Two) and Summer National Minutes (*see NAIC Proceedings – Summer 2019, Senior Issues (B) Task Force*) minutes. The motion passed.

2. Heard a Federal Legislative Update

David Torian (NAIC) provided an update on federal funding for the State Health Insurance Assistance Program (SHIP) and informed the Task Force about a draft legislative proposal by U.S. Sen. Pat Toomey (R-PA) based on one of the policy option recommendations adopted by the Task Force. Mr. Torian said the draft legislation would allow for retirement account dollars to be used to buy long-term care insurance (LTCI) so families can better plan for long-term services and supports (LTSS) needs. Mr. Torian said Sen. Toomey's office would be happy to receive recommendations and comments to the draft proposal from Task Force members and stakeholders.

3. Discussed Other Matters

Bonnie Burns (California Health Advocates—CHA) discussed conflicts between Medicare, the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and the *Coordination of Benefits Model Regulation* (#120) (Attachment Three).

Ms. Burns pointed out that too many workers do not know that they must enroll in Medicare even if they are continuing to work past the age 65. She said these conflicts have left some Medicare-eligible individuals subject to Medicare premium penalties and delays in coverage, mistakes in benefit payment and claims for recovery of mistakenly paid COBRA benefits.

Ms. Burns cited an example of a woman receiving a demand from her COBRA carrier for repayment of \$150,000 for health care expenses the carrier had paid after she stopped working. The carrier alleged that while she was still working, she became eligible for Medicare on her 65th birthday and should have enrolled for Medicare benefits. The carrier alleged that Medicare should have been her primary health coverage once she stopped working and COBRA should have paid secondary benefits, not the \$150,000 the carrier had paid for primary coverage. This demand for repayment of primary benefits was based on her eligibility to enroll in Medicare or "implied coverage."

Draft Pending Adoption

Director Wing-Heier asked Ms. Burns what the path would be for the state insurance regulator in this matter, as it seems that this an issue at the federal level. Ms. Burns replied that insurers follow Model #120, noting that the language in the model needs to be made clearer.

Ms. Nelson said not all states have adopted the newest version of Model #120, noting that she shares Director Wing-Heier's sentiment that this may be more of a federal matter.

Ms. Sizemore said Oregon is having trouble with this issue, noting that insurers cannot assume people are on Medicare; they must know and ask.

Director Wing-Heier said each state should check its own laws and suggested the Task Force look at this matter in the new year.

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

W:\National Meetings\2019\Fall\TF\SR\08-SITFmin.docx