NAIC National Association of Insurance Commissioners

2019 Summer National Meeting
New York, New York

SENIOR ISSUES (B) TASK FORCE
Saturday, August 3, 2019
2:15 – 3:30 p.m.
New York Hilton Midtown -- Grand Ballroom - 3rd Level

Lori K. Wing-Heier, Chair	**Alaska**	**Anita G. Fox**	**Michigan**
Marlene Caride, Vice Chair	**New Jersey**	**Steve Kelley**	**Minnesota**
Jim L. Ridling	**Alabama**	**Mike Chaney**	**Mississippi**
Peter Fuimaono	**American Samoa**	**Chlora-Lindley-Myers**	**Missouri**
Allen W. Kerr	**Arkansas**	**Bruce R. Ramge**	**Nebraska**
Ricardo Lara	**California**	**Barbara D. Richardson**	**Nevada**
Michael Conway	**Colorado**	**John G. Franchini**	**New Mexico**
Andrew N. Mais	**Connecticut**	**Mike Causey**	**North Carolina**
Trinidad Navarro	**Delaware**	**Jon Godfread**	**North Dakota**
Stephen C. Taylor	**District of Columbia**	**Jillian Froment**	**Ohio**
David Altmaier	**Florida**	**Glen Mulready**	**Oklahoma**
John F. King	**Georgia**	**Andrew Stolfi**	**Oregon**
Colin M. Hayashida	**Hawaii**	**Jessica Altman**	**Pennsylvania**
Dean Cameron	**Idaho**	**Larry Deiter**	**South Dakota**
Robert Muriel	**Illinois**	**Carter Lawrence**	**Tennessee**
Stephen W. Robertson	**Indiana**	**Kent Sullivan**	**Texas**
Doug Ommen	**Iowa**	**Todd E. Kiser**	**Utah**
Vicki Schmidt	**Kansas**	**Scott A. White**	**Virginia**
Nancy G. Atkins	**Kentucky**	**Mike Kreidler**	**Washington**
James J. Donelon	**Louisiana**	**James A. Dodrill**	**West Virginia**
Eric A. Cioppa	**Maine**	**Mark Afable**	**Wisconsin**
Al Redmer Jr.	**Maryland**	**Jeff Rude**	**Wyoming**
Gary Anderson	**Massachusetts**		

NAIC Support Staff: David Torian

AGENDA

1. Consider Adoption of the July 18, June 19 and Spring National Meeting Minutes—*Director Wing-Heier (AK)*
2. Continued Discussion of Fraudulent DNA/Genetic Swab and Cancer Tests—*Martin Swanson (NE)*
3. Presentation by Society of Actuaries (SOA) on LTC New Innovative Products, Hybrid & Combo LTC Products, and InsureTech—*Dale Hall (SOA Managing Director of Research) and Steve Schoonveld (SOA LTCI Section)*
4. Review of Third MACRA-Related Bulletin on Marketing Standards—*David Torian (NAIC)*
5. Hear Federal Legislative Update—*David Torian (NAIC)*
6. Discuss Any Other Matters Brought Before the Task Force—*Director Wing-Heier (AK)*
7. Adjournment

Agenda Item #1

Consider Adoption of the July 18, June 19 and Spring National Meeting Minutes

Senior Issues (B) Task Force
Conference Call
July 18, 2019

The Senior Issues (B) Task Force met via conference call July 18, 2019. The following Task Force members participated: Lori K. Wing-Heier, Chair, represented by Sarah Bailey (AK); Marlene Caride, Vice Chair, represented by Philip Gennace (NJ); Jim L. Ridling represented by William Rodgers (AL); Allen W. Kerr represented by William Lacy (AR); Ricardo Lara represented by Tyler McKinney (CA); Michael Conway represented by Adam Boggess (CO); Trinidad Navarro represented by Susan Jennette (DE); David Altmaier represented by Craig Wright (FL); John F. King (GA); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Kathy McGill (ID); Robert H. Muriel represented by Eric Anderson (IL); Stephen W. Robertson represented by Rebecca Vaughan (IN); Vicki Schmidt (KS); Nancy G. Atkins represented by Stephanie McGaughey-Bowker (KY); James J. Donelon represented by Tom Travis (LA); Al Redmer Jr. represented by Fern Thomas (MD); Eric A. Cioppa represented by Sherry Ingalls (ME); Anita G. Fox represented by Renee Campbell (MI); Steve Kelley represented by Fred Andersen (MN); Chlora Lindley-Myers (MO); Mike Chaney represented by Kay Warrington (MS); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Yuri Venjohn (ND); Bruce R. Ramge represented by Martin Swanson (NE); John G. Franchini represented by Anna Krylova (NM); Jillian Froment represented by Marjorie Ellis (OH); Glen Mulready represented by Mike Rhoads (OK); Andrew Stolfi represented by Gayle Woods (OR); Jessica Altman represented by Sandra L. Ykema (PA); Carter Lawrence represented by Brian Hoffmeister (TN); Kent Sullivan represented by Dewayne Matthews (TX); Todd E. Kiser represented by Tomasz Serbinowski and Jaakob Sundberg (UT); Scott A. White represented by Yolanda Tennyson (VA); Mike Kreidler represented by Michael Bryant (WA); Mark Afable represented by Jennifer Stegall (WI); and Jeff Rude represented by Peter Greff (WY). Also participating were: Pam Koenig (MT); Sarah Allen (NY); and Andrew Dvorine (SC).

1. Discussed the Letter to the Chairman of the House Committee on Ways and Means

David Torian (NAIC) opened the conference call by reminding the Task Force that the response letter to the chairman of the House Ways and Means Committee (Committee) should simply be a response to a request for the NAIC's opinion on possibly adding a long-term support and services (LTSS) component to Medicare supplement (Medigap). He said there is no bill or legislation; there is no outline or draft. He said it is just an idea that this congressional committee has, and it wants the NAIC's opinion.

Mr. Torian said the draft response is deliberately broad and long, encompassing all the common views received. He said he attempted to divide the comments into paragraphs of "topic areas." He said the goal for the call is to edit the draft so that it can be approved, adopted, and sent to the Government Relations Leadership Council (GRLC) for final adoption.

Harry Ting (Consumer Advocate Volunteer, Chester County Department of Aging Services – Apprise Program), Bonnie Burns (California Health Advocates—CHA), and Ms. Mealer offered suggested language to edit the first paragraph. John Cutler (Consultant to Minnesota Department of Commerce) said incorporating an LTSS into Medigap may not necessarily have high costs or high premiums. He said a limited LTSS component would not have to cause havoc to the costs and the market. Ms. Mealer suggested re-ordering the comments.

Heather Jerbi (America's Health Insurance Plans—AHIP) said she did not feel that the language in the draft expressing "some concerns and observations" truly reflects the potentially significant implications of adding, for example, a mandated benefit across all plans in the Medigap program. She said she has concerns with any if/then statement that accepts the prospect of an LTSS as a benefit requirement for all Medigap plans. Mr. Ting said any impact would also depend on whether an LTSS component is incorporated in all Medigap plans or only some plans.

Ms. Mealer said the draft should have an opening paragraph followed by either bullet points or a listing of the general issues of concern. Mr. Swanson agreed with that format. Ms. Burns said the draft should point out that to reach the largest number of the Medigap buyers could only be accomplished by requiring a mandatory benefit that would be included in every Medigap standardized benefit package, and the benefit itself would have to be standardized to prevent adverse selection and avoid complex and abusive comparisons and potential marketing and sales abuses.

Peggy Camerino (Torchmark Companies) said any cost without understanding the context of everything else is not calculable, and pricing cannot be ascertained in a vacuum. She said ultimately the consumer cannot be priced out. Ms. Seip said the draft should include a solution-based paragraph and perhaps suggest that the Committee monitor the changes in Medicare Advantage

plans with LTSS components. Mr. Cutler said the draft should emphasize to the Committee that language is important. He said consumers will equate LTSS with long-term care insurance (LTCI) and defining the benefit should be concise. Mr. McKinney said the draft should be focused and respond to the request of the Committee.

Mr. Torian said a new response based upon the comments of today's call will be put together. He then asked Ms. Mealer and Mr. Swanson to discuss the issues they wanted to bring to the attention of the Task Force.

Ms. Mealer said she has heard some confusion about one of the requirements of the *Medicare Access and CHIP Reauthorization Act* of 2015 (MACRA). She said MACRA requires insurers to keep Plan F available for those eligible for Medicare prior to Jan. 1, 2020. She said some have questioned whether insurers are required to offer Plans D or G for those eligible on or after Jan. 1, 2020.

Ms. Mealer said insurers can continue to sell Plans C or F to Medicare beneficiaries who became eligible for Medicare prior to Jan. 1, 2020. However, "newly eligible" Medicare beneficiaries cannot apply for or be sold Plans C or F. She said the "newly eligible" individuals could be offered Plans D or G on a guaranteed issue basis instead. She said all other currently available plans may continue to be offered to all Medicare beneficiaries regardless of their date of eligibility for Medicare. She also pointed out that current enrollees (those eligible for Medicare prior to Jan. 1, 2020) are not affected.

Ms. Mealer said current enrollees can continue with their Plans C or F, including the F High Deductible plan; and they may continue to buy Plans C or F beyond Jan. 1, 2020. She said MACRA did not change federal law regarding the offer of Plans C or F for individuals who are Medicare eligible before Jan. 1, 2020. Section 1882 (o)(5) of the Social Security Act provides that if an issuer offers a plan other than the core benefits, the issuer must also offer Plans C or F; and the NAIC Model Regulation—also a federal minimum standard—provides at Section 9.1.A.(2) that an issuer shall make available the core benefits and, if any, Plans C or F.

Ms. Mealer finally pointed out that both the federal statutory provision and the NAIC Model Regulation provide that if an issuer offers a plan other than the core benefits, the issuer must also offer Plans C or F (Plans D or G for newly eligible).

Mr. Swanson asked the Task Force if any states have experienced or seen requests to split forms on rates on MACRA rate filings and split forms on MACRA form filings. He requested that the states please forward examples or evidence that they may have encountered to Mr. Torian.

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

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Senior Issues (B) Task Force
Conference Call
June 19, 2019

The Senior Issues (B) Task Force met via conference call June 19, 2019. The following Task Force members participated: Lori K. Wing-Heier, Chair (AK); Marlene Caride, Vice Chair, represented by Philip Gennace (NJ); Jim L. Ridling represented by Anthony L. Williams (AL); Allen W. Kerr represented by William Lacy (AR); Ricardo Lara represented by Priya Chisholm (CA); Andrew N. Mais represented by Paul Lombardo (CT); Trinidad Navarro represented by Susan Jennette (DE); David Altmaier (FL); Jim Beck represented by Teresa Winer (GA); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Donna Daniel (ID); Stephen W. Robertson represented by Rebecca Vaughan (IN); Vicki Schmidt represented by Craig Van Aalst (KS); Nancy G. Atkins represented by Stephanie McGaughey-Bowker (KY); Al Redmer Jr. represented by Adam Zimmerman (MD); Eric A. Cioppa represented by Sherry Ingalls (ME); Anita G. Fox represented by Karen Dennis (MI); Steve Kelley represented by Fred Andersen and Grace Arnold (MN); Chlora Lindley-Myers (MO); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Yuri Venjohn (ND); Bruce R. Ramge represented by Rhonda Ahrens and Martin Swanson (NE); John G. Franchini represented by Anna Krylova (NM); Barbara D. Richardson (NV); Jillian Froment represented by Laura Miller (OH); Glen Mulready represented by Mike Rhoads (OK); Andrew Stolfi represented by Gayle Woods (OR); Jessica Altman represented by Sandra L. Ykema (PA); Larry Deiter represented by Jill Kruger (SD); Carter Lawrence represented by Brian Hoffmeister (TN); Todd E. Kiser represented by Tomasz Serbinowski and Jaakob Sundberg (UT); Mike Kreidler represented by Michael Bryant (WA); Mark Afable represented by Jennifer Stegall (WI); and Jeff Rude represented by Peter Greff (WY). Also participating were: Erin Klug (AZ); Pam Koenig (MT); Martin Wojcik (NY); and Lee Hill (SC).

2. Discussed a Letter to the NAIC from the Chairman of the House Committee on Ways and Means

Director Wing-Heier said the purpose of this meeting is to discuss the letter from the Chairman of the House Committee on Ways and Means (Committee), Richard Neal of Massachusetts, asking for the NAIC's input on the possibility of expanding long-term services and support (LTSS) availability in Medicare Supplement (Medigap), and to address the questions raised in the letter.

Mr. Lombardo said the cost of purchasing LTSS benefits at age 65 and beyond is extremely expensive, and it will only exacerbate the anti-selection issue if this benefit is not required or mandatory. He also said each state has different laws and regulations governing the issuance of Medigap policies, which complicates a standardized format for issuance of LTSS benefits.

Mr. Lombardo said Connecticut is guaranteed issue at all times once an individual becomes eligible for Medicare, and he asked if carriers would be required to issue LTSS benefits on a guaranteed issue basis, beyond a specific open enrollment period. He also asked if underwriting of any kind would be allowed for the LTSS benefit. He also said Connecticut allows guarantee issue of Medigap Plans A, B and C for Medicare eligible by disability prior to age 65, and once they become age eligible, all plans are guaranteed issue for the disabled. He also asked how the Committee's idea would impact the issuance of LTSS benefits.

Mr. Lombardo further said Connecticut is a pure community-rated state for Medigap, meaning the same rate for all consumers (including disabled), and he asked how this idea would impact the pricing of LTSS benefits. He said many Medigap carriers currently do not offer long-term care (LTC) style benefits in the market today, and they do not have the expertise to price LTSS benefits. He asked if they would be required to offer LTSS benefits if they still want to write Medigap policies.

Director Wing-Heier asked how many states are guaranteed issue. Mr. Lombardo said he did not know, but he would guess a minority. Bonnie Burns (California Health Advocates—CHA) said four states are guaranteed issue. Ms. Domzalski-Hansen said Minnesota is both community-rated and guaranteed issue. Ms. Seip said Iowa does not have guaranteed issue, but it has a special trigger. Mr. Swanson said 30 states have guaranteed issue for those under 65 years of age. Ms. Burns expressed concern about adding LTSS services to Medigap because the cost may start low, but it will grow over time, become unaffordable, and drive up the cost of plans.

Director Wing-Heier asked what the impact of such changes would have on the market as a whole and by state. Ms. Arnold said Minnesota had conducted a focus group study of seniors, and she would share it with the Task Force. Mr. Bryant said he agreed with the comments of Ms. Burns and Mr. Lombardo. Director Wing-Heier and Mr. Swanson both said the idea proposed by the Committee is a great idea, but they do not see how it will work.

Director Wing-Heier asked Ms. Ahrens to discuss her comments. Ms. Ahrens said depending on how the LTSS is priced, disruption in the current Medigap/Medicare Advantage (MA) market should be considered. She said currently, seniors choose whether to supplement Medicare with more of a full-coverage health plan using Medigap or by choosing MA. She said she is less familiar with MA, but for Medigap, premiums are not necessarily cheap. She asked if adding LTSS as a requirement would create an inhibitive cost that leaves seniors underinsured for basic health insurance coverage because they end up choosing not to pay the higher premiums.

Ms. Ahrens also asked if the requirement will cause market disruption in that Medigap insurers who do not want to accept LTC risks may leave the market if the current plans are required to include the LTSS benefits. She said it appears that the benefits are meant to keep people in their homes longer if they need care, so they are more limited in nature and more similar to home health care than nursing home services. She asked if the Committee has solutions to the availability of home health care providers if care for those needing assistance with activities of daily living (ADL) is meant to be shifting from assisted living and nursing homes to the home. If not, she asked if these services are meant to be potentially provided by family members.

Ms. Ahrens said anti-selection would be an issue if the LTSS benefits are not required to be included with all Medigap plans, so balancing this with the points already mentioned should be considered. She said anti-selection will be more complicated if there is a special enrollment period (SEP) offered to current Medicare beneficiaries with Medigap plans versus just offering this to newly eligible individuals. She asked if companies will be allowed to introduce age rating in any SEP; and if not, pricing will be difficult because estimating the percentage of individuals who will enter at each age will be difficult.

Ms. Ahrens said Medigap and LTC are not priced the same. She said LTC has pre-payment as most of the benefits are received at age 80 and above, while healthcare costs under Medigap do not have as steep of a claim cost curve. She said she believes a lot of actuaries are having some trouble understanding the best way to merge this type of cost structure into one product with one premium. She said Medigap is sometimes made available with attained age premium schedules, which would absolutely not work for the LTSS component because of the steep claim cost curve.

Ms. Ahrens asked if the Committee contemplated having a portion of this LTSS component added to Medicare rather than fully through Medigap. She said currently, Medigap providers benefit from claims first going through Medicare, so the claims adjudication is very streamlined for Medigap. She said the LTSS benefit, if not shared by Medicare at any level, would require Medigap providers to implement enhanced claims management systems that may be inhibitive and force some out of the market.

Director Wing-Heier suggested that a letter of response be drafted and then circulated among the Task Force. There was agreement after several comments that the response letter should be balanced and express the pros and cons of the proposal. Silvia Yee (Disability Rights Education & Defense Fund—DREDF) mentioned a community living study that could be helpful, and she said she would submit it to David Torian (NAIC). Mr. Andersen said carriers should be asked about obstacles they see with the Committee's proposal/idea.

Heather Jerbi (America's Health Insurance Plans—AHIP) talked about the impact of the Committee's proposal to the Medigap market, the cost to consumers, and the effect on rates and ratings. Director Wing-Heier said the two LTC task forces, the Long-Term Care Insurance (B/E) Task Force and the Long-Term Care Insurance (EX) Task Force, are examining this area. Mr. Swanson asked if insurers would be allowed to pull out if LTSS is mandated. He did not believe it should be mandated.

Director Wing-Heier asked the Task Force to submit comments to Chairman Neal's letter as soon as possible. She asked Mr. Torian to draft a response letter based upon the comments received, and the Task Force would hold a conference call next month to review and discuss.

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

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Senior Issues (B) Task Force
Orlando, Florida
April 6, 2019

The Senior Issues (B) Task Force met in Orlando, FL, April 6, 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 William Lacy (AR); Ricardo Lara represented by Perry Kupferman (CA); Michael Conway (CO); Andrew N. Mais represented by Paul Lombardo (CT); Stephen C. Taylor represented by Howard Liebers (DC); Trinidad Navarro represented by Fleur McKendell (DE); David Altmaier represented by Chris Struk (FL); Jim Beck (GA); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Elaine Mellon (ID); Robert H. Muriel represented by Jennifer Reif (IL); Stephen W. Robertson represented by Karl Knable (IN); Vicki Schmidt represented by Julie Holmes (KS); Nancy G. Atkins represented by John Melvin (KY); James J. Donelon represented by Ron Henderson (LA); Gary Anderson represented by Christopher Joyce (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 Martin Fleishhacker (MN); Chlora Lindley-Myers (MO); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Chrystal Bartuska (ND); Bruce R. Ramge represented by Martin Swanson (NE); John G. Franchini represented by Paige Duhamel (NM); Barbara D. Richardson represented by Dave Cassetty (NV); Jillian Froment represented by Laura Miller (OH); Glen Mulready represented by Andy Schallhorn (OK); Andrew Stolfi represented by Tashia Sizemore (OR); Jessica Altman (PA); Larry Deiter represented by Jill Kruger (SD); Julie Mix McPeak represented by Brian Hoffmeister (TN); Kent Sullivan represented by Raja Malkani (TX); Todd E. Kiser represented by Nancy Askerlund (UT); Scott A. White represented by Julie Blauvelt (VA); and Mike Kreidler represented by Molly Nollette (WA).

1. Delayed the Discussion of Life Expectancy and Retirement Products

Director Wing-Heier said this topic will be discussed at the Summer National Meeting.

2. Discussed DNA Swabbing/Genetic Information Collection

Mr. Swanson said there is a proliferation of companies and entities that are doing DNA swabs of residents in nursing homes, senior facilities and other venues, while claiming that Medicare will cover 100% of the cost of the test. He said most insurance providers are happy to pay several thousand dollars on a test that will potentially save them hundreds of thousands of dollars per policyholder by informing them of their risks. He said Medicare covers such tests for genetic propensity for cancer.

However, Mr. Swanson said these swabs and tests go beyond testing for cancer risk, noting that other states are encountering similar practices, such as California, Kansas, New Jersey and Texas. He said Nebraska's Seniors' Health Insurance Information Program (SHIIP) became aware of several reports of entities going into nursing homes, assisted living facilities and senior centers to "swab" individuals purportedly to look for genetic markers for cancer. He said the Nebraska Department of Insurance looked further into the reports and discovered that the practice had proliferated around Nebraska and other states.

Mr. Swanson said that while genetic testing is allowed in certain circumstances by Medicare, it is unclear if those limitations are being followed by these entities. He said Nebraska's investigation revealed that multiple swabbings would occur at the facilities, and submissions for payment to Medicare and Medicare Advantage insurers would occur. The cost of each swab can range from approximately $1,300 to as high as $10,000.

Mr. Swanson said further investigations revealed that some individuals may be billed if Medicare or the advantage plan does not pay for the testing. He said the method of how consent to test is obtained and it is unclear what is done with the genetic material after the test is completed. He also said it is unclear what happens to the DNA results and the genetic information gathered, including where it is stored and how it may be used.

Director Wing-Heier asked if any of the insurers present or any of the Task Force members have heard or experienced this or have any additional information to share.

Commissioner Caride said the New Jersey Department of Baking and Insurance has a watch group investigating these practices and has notified the New Jersey department of health.

Ms. Nollette said Washington state is not aware of any such cases but is aware of a related in-network case.

Director Wing-Heier asked Mr. Swanson if the consumer gets anything back from their DNA/genetic results or just a bill. Mr. Swanson said it is unclear.

Commissioner Altman asked Mr. Swanson if these matters have been referred to the federal Centers for Medicare & Medicaid Services (CMS), because they have a robust review. Mr. Swanson said they have been.

Ms. Holmes said Kansas is aware of one complaint, which was referred to the U.S. Department of Health and Human Services (HHS).

Bonnie Burns (California Health Advocates—CHA) said it is important that insurance agents are made aware of these practices, noting that this issue is another example of scams that consistently come up to defraud Medicare. She said these scammers are targeting senior centers along with nursing homes.

Silvia Yee (Disability Rights Education and Defense Fund—DREDF) said this issue targets more than the individual, but also the family and generations down the line. She said when seniors are targeted, they will naturally inform their children and grandchildren, who may act on their health and insurance needs based on the act of the targeted senior.

Marcy Buckner (National Association of Health Underwriters—NAHU) said the NAHU is aware of these scams, has been educating and speaking with their agents, and has a working group looking into this matter.

Director Wing-Heier said that while there is a place for such genetic/DNA testing, there must be a reason for it; and targeting and taking advantage of seniors is unacceptable. She said the Task Force will investigate what the NAIC can do about it.

Commissioner Conway asked Mr. Swanson if this issue has been brought to the attention of Nebraska's attorney general. Mr. Swanson said it has been. Mr. Hamby asked if there is evidence of complicity by the facilities where these scams occur. Mr. Swanson said the vast majority of facilities are unaware; however, there is evidence of one or two that have been complicit, but generally the majority are not.

3. Heard from the NAHU About MACRA Changes

Director Wing-Heier asked Ms. Buckner and Jessica Waltman (Forward Health Consulting) to inform the Task Force about the NAHU's work on educating agents on the changes to Medicare supplement (Medigap) insurance as a result of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA).

Ms. Waltman said the NAHU represents approximately 100,000 licensed agents and brokers nationwide, including thousands of members who focus their practice on the private Medicare marketplace. She said the NAHU provides professional education to its members so they can advise their clients in an accurate and timely manner about relevant public policy changes and related marketplace developments. She said the NAHU ensures that all its members who work with Medicare beneficiaries know how MACRA will affect the program beginning Jan. 1, 2020.

Ms. Waltman said the NAHU provides valuable information to as many members as possible and utilizes a multi-prong strategy for all communications, designed to provide educational content and product and compliance information. She said NAHU members respond best to content presented in a wide range of formats, so that methodology has been used to provide them with information about how MACRA will affect the Medigap market. She said topics routinely addressed include new Medicare identification cards for beneficiaries, upcoming changes to the eligibility rules, and who will and will not be considered newly eligible.

Ms. Waltman said the NAHU covers how limits to first-dollar coverage and changes to guaranteed issue requirements will affect newly eligible beneficiaries, as well as how changes to eligibility will affect marketing of existing plans and the new Plan G. She said the NAHU also educates members about how MACRA has changed payments to Medicare providers and other facets of the law, like its impact on individuals who are in the hospital on observation status compared to those in inpatient status.

Ms. Waltman said the NAHU has provided, and continues to provide, information about these changes through its quarterly newsletter that covers topics specific to Medicare, monthly member magazine, monthly compliance webinars, weekly podcast and continuous updates on its website. She said the NAHU also includes information about MACRA changes in presentation materials used by national leaders and staff, and has offered an educational session that addresses this topic at its annual

conference for the past five years, the most recent of which was held just six weeks ago and was attended by almost 1,000 agents and brokers.

Ms. Waltman said the NAHU has been hosting targeted Medicare Summits for groups of producers all over the U.S. She said, during 2018, the NAHU hosted 22 summits and, in 2019, 30 summits are scheduled with four more in the planning stages. She said most summits attract producers from both the host state and neighboring states, and MACRA changes are part of the core curriculum of every summit.

Ms. Waltman said NAHU's members face several challenges with providing this information to beneficiaries. She said one problem its members report concerning MACRA is the need for the states to take timely action to adopt the changes necessary to implement MACRA requirements. She said as the states move forward with their implementation procedures, more information tends to flow to the producer community, which they can then pass on to beneficiaries in that state. Additionally, she said, once state insurance regulators approve plan offerings for 2020 and health insurance carriers publish rate information and related supplementary materials for producers, the NAHU will be able to intensify its efforts to educate the agent community.

Ms. Waltman said another challenge NAHU members face is the lack of information and, in some cases, misinformation in distribution about the impact of MACRA. She said the frustration this has caused among NAHU members is one of many reasons for the increase in education the NAHU has provided to its members who are active in the Medicare market. She said the NAHU recognizes an increased desire for the accurate dissemination of information to provide appropriate guidance for Medicare beneficiaries, noting that the NAHU is looking to the states to disseminate implementation procedures to best educate its members and the consumers they serve.

Director Wing-Heier encouraged the states to make the necessary MACRA changes to their laws and/or regulations so that providers can educate themselves and help their consumers. She asked if there is information about MACRA on the NAHU website. Ms. Buckner said there is, both on the NAHU website and on a webpage dedicated to MACRA.

Ms. Seip asked if the NAHU talks with agents and producers about consumers being told that rates will go up, given that Plan C and Plan F are not available to the "newly eligible" and the death spiral that will occur. Ms. Waltman said the NAHU focuses on the law and how it affects the two groups of consumers, and the agents do their best to provide the best possible recommendations to the consumers.

Ms. Mellon said quite a few complaints have been heard regarding stories about Plan F going away, that consumers must change plans or that rates are going up because of MACRA. She said—after issuing bulletins, notices, warnings and other resources—complaints have been nearly nonexistent.

Director Wing-Heier reminded the Task Force that it developed two bulletins—one for consumers and one for producers—that the states are free to use and edit to their individual state needs.

Ms. Sizemore asked if the NAHU will work with the state insurance departments to help them and the state shut down these false and misleading claims. Ms. Buckner said the NAHU would be happy to help, noting that most of the attendees at the NAHU summits are not NAHU members, so they can connect with persons outside of the NAHU.

Heather Jerbi (America's Health Insurance Plans—AHIP) said it is important for the states to complete their implementations, requesting that the states complete them by June 1, 2019. Although neither federal law nor the *Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act* (#651) require the states to adopt MACRA changes via relevant legislation and/or regulation by no later than June 1, 2019, she said it would be of great help to insurers to have states compete the legislative and/or regulatory changes to their Medigap laws as quickly as possible.

4. Heard a Federal Legislative Update and MACRA Update

David Torian (NAIC) reminded the Task Force that funding for the State Health Insurance Assistance Program (SHIP) was fully funded for fiscal year 2019 at $49,115,000. He said the president's fiscal year 2020 budget cuts SHIP funding by $13,000,000 from the fiscal year 2019 funding. He said, historically and generally, the U.S. Congress does not act on the president's budget and instead drafts its own budget and appropriation funding; therefore, the focus for fiscal year 2020 funding will be on the House Committee on Appropriations and the Senate Committee on Appropriations.

Mr. Torian said the NAIC will continue to strongly support SHIP funding and urge Congress to pass full funding for this vital and important program. He also informed the Task Force of a Medigap bill that was introduced in Congress about five weeks ago that references the NAIC. He said the bill, HR 1394, Medigap Consumer Protection Act of 2019, was introduced by U.S. Rep. Lloyd Doggett (D-TX), chairman of the House Ways and Means Committee's Subcommittee on Health, and it asks the NAIC to review and "improve" the medical loss ratio (MLR) requirements for group and individual policies, review and develop new premium pricing standards, and prohibit the sale of policies that discriminate based on age. He said the bill also repeals the MACRA changes and restores prior law. Mr. Torian said the likelihood of passage of this bill is low.

Mr. Torian said of the 50 states and the District of Columbia, 43 have either enacted the required changes to their Medigap laws or regulations or are near enactment. He said the states are encouraged to complete their implementation processes as quickly as possible so the necessary mechanisms, such as outlines of coverage, can be disclosed to consumers. He reminded the states that federal law requires the states to adopt standards that are equal to or more stringent than Model #651, and failure to adopt the MACRA amendments prior to Jan. 1, 2020, could cause states to lose their regulatory authority over the provisions of the MACRA amendments.

Mr. Torian said the Task Force has produced two bulletins about MACRA, and the states and other parties are free to use these bulletins to educate their respective constituencies. He said the Task Force will investigate developing a marketing and sales bulletin for the states to use.

5. Heard a Discussion about Medicare and COBRA

Ms. Burns and Harry Ting (Consumer Advocate Volunteer, Chester County Department of Aging Services – Apprise Program) said the Task Force should be made aware of a complicated topic that is hard to summarize and generalize without leaving out important technical information. Ms. Burns said it is a topic of growing importance as more people work past their 65th birthday.

Ms. Burns said the U.S. Bureau of Labor Statistics (BLS) notes that the number of people working past age 65 today is the highest it has been in 55 years. She said the BLS projects that 36% of people between the ages of 65 and 69 will be in the labor force by 2024. As a result, a significant number of people are likely to experience being eligible for the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and Medicare at the same time in the future.

Ms. Burns said federal health benefit payment rules that apply while someone is working and eligible for Medicare are not the same after one stops working and is eligible for COBRA and Medicare at the same time. She highlighted a recent case. She said one of her clients asked for help with a bill for $120,000 from a COBRA carrier. She said the client had stopped working and taken COBRA but had not signed up for Medicare when she was eligible to do so, nor when she signed up for COBRA.

Ms. Burns said, as a result, the COBRA carrier had paid for her client's covered health care expenses until a company audit revealed that she had been eligible for Medicare before she took out COBRA. She said the COBRA carrier was billing the client for expenses that should have been billed to Medicare. She said this is not the first client the CHA has seen with a recoupment notice from a COBRA carrier, but it is the largest amount the CHA has seen.

Ms. Burns introduced Mr. Ting to the Task Force as a new NAIC consumer representative from Pennsylvania. Mr. Ting told the Task Force about his experience with his former employer, as well as with COBRA and Medicare, noting that had he not investigated further, he could have been caught in the problem that many other consumers find themselves in.

Mr. Ting said if one signs up for COBRA and that person is eligible for Medicare at the same time, the COBRA benefits are intended to be paid after Medicare pays, even if the person has not actually signed up for Medicare. He also said that when one does sign up for Medicare later, the person could be subject to premium penalties for late enrollment, and a COBRA carrier may be able to bill that person for any benefits paid by mistake when Medicare should have paid first.

Ms. Burns suggested that a letter from the NAIC to the U.S. Department of Labor (DOL) and CMS pointing out this problem could be helpful.

Director Wing-Heier asked the Task Force if anyone had any objection to having a letter drafted. No objections were heard. She asked Mr. Torian to begin drafting a letter.

6. Adopted its March 7, 2019, and 2018 Fall National Meeting Minutes

The Task Force met March 7, 2019 and took the following action: 1) discussed its agenda for 2019; 2) disbanded the Short Duration Long-Term Care Policies (B) Subgroup and the Long-Term Care Shopper's Guide (B) Working Group; and 3) discussed MACRA.

Mr. Ostlund made a motion, seconded by Commissioner Altman, to adopt the Task Force's March 7, 2019 (Attachment One) and Nov. 15, 2018 (*see NAIC Proceedings – Fall 2018, Senior Issues (B) Task Force*) minutes. The motion passed.

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

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Agenda Item #2

Continued Discussion of Fraudulent DNA/Genetic Swab and Cancer Tests

As the Task Force will recall, the Task Force held a discussion at the Spring National Meeting in Orlando about entities going into nursing homes, assisted living facilities and senior centers to “swab” individuals purportedly to look for genetic markers for cancer.

While genetic testing is allowed in certain circumstances by Medicare, it is unclear if those limitations are being followed by these entities. But investigations by some States, such as Nebraska, and other entities revealed that multiple swabbings would occur at the facilities and submissions for payment to Medicare and to Medicare Advantage insurers would occur.

Further investigations revealed that some individuals were being billed should Medicare or the advantage plan did not pay for the testing. The method of how consent to test is obtained and what is done with the genetic material after the test is completed is also unclear.

Nebraska will update the Task Force on this fraud and scam. The Office of Inspector General of the U.S. Health and Human Services Department issued an alert in June to warn consumers. The alert is posted below and here is a link to the alert on the OIG HHS website: https://oig.hhs.gov/fraud/consumer-alerts/alerts/geneticscam.asp

Fraud Alert: Genetic Testing Scam

The U.S. Department of Health and Human Services Office of Inspector General is alerting the public about a fraud scheme involving genetic testing.

Scammers are offering Medicare beneficiaries cheek swabs for genetic testing to obtain their Medicare information for identity theft or fraudulent billing purposes. Fraudsters are targeting beneficiaries through telemarketing calls, booths at public events, health fairs, and door-to-door visits.

If a beneficiary agrees to genetic testing or verifies personal or Medicare information, a testing kit is sent even if it is not ordered by a physician or medically necessary.

Protect Yourself

- If a genetic testing kit is mailed to you, don't accept it unless it was ordered by your physician. Refuse the delivery or return it to the sender. Keep a record of the sender's name and the date you returned the items.
- Be suspicious of anyone who offers you free genetic testing and then requests your Medicare number. If your personal information is compromised, it may be used in other fraud schemes.
- A physician that you know and trust should approve any requests for genetic testing.

- Medicare beneficiaries should be cautious of unsolicited requests for their Medicare numbers. If anyone other than your physician's office requests your Medicare information, do not provide it.
- If you suspect Medicare fraud, contact the HHS OIG Hotline.

Last updated: **June 3, 2019**

Agenda Item #3

Presentation by Society of Actuaries (SOA) on LTC New Innovative Products, Hybrid & Combo LTC Products, and InsureTech

Presentation Slides Posted on both the SITF Webpage and the NAIC Agenda Matrix Meetings Page

https://naic-cms.org/cmte_b_senior_issues.htm

https://www.naic.org/meetings1908/sortable_agenda.htm

Agenda Item #4

Review of Third MACRA-Related Bulletin on Marketing Standards

MEDIGAP MARKETING STANDARDS AND MACRA CHANGES

The Medicare Access and CHIP Reauthorization Act of 2015 ("MACRA") was signed into law on April 16, 2015. MACRA prohibits the sale of Medigap policies and riders that cover Part B deductibles to "newly eligible" Medicare beneficiaries. "Newly eligible" Medicare beneficiaries are defined as those individuals who: (a) have attained age 65 on or after January 1, 2020; or (b) first become eligible for Medicare due to age, disability or end-stage renal disease, on or after January 1, 2020.

Because MACRA prohibits the sale of Medicare supplement coverage that covers the Part B deductible to those individuals who first become eligible for Medicare on or after January 1, 2020, both insurance companies and agents doing business in the Medicare supplement marketplace may not engage in any marketing activities that violate this prohibition. In addition, significant changes to Medicare supplement requirements as is the case with MACRA may result in improper marketing and sales activity that can cause harm to Medicare supplement consumers. The purpose of this bulletin is to address such improper activity.

Federal minimum standards for Medigap insurance include the NAIC Medigap Model Regulation which establishes "Marketing Standards" in Section 20. The "Marketing Standards" that are incorporated by reference in the federal minimum Medigap standards of the Social Security Act (section 1882) apply to an "issuer" and its "producers."

The purpose of this bulletin is to remind those who operate in the Medicare supplement marketplace of marketing and sales activity that violate the law [*cite the appropriate state law*]. In addition to the acts or practices prohibited by the state's Unfair Trade Practices law, the following acts or practices are prohibited under the Federal minimum standards:

- "Twisting." Knowingly making **any misleading representation or incomplete or fraudulent comparison** of any insurance premiums, policies or issuers.

- "High pressure tactics." Employing any method of marketing to induce the purchase of insurance through force, fright, threat, or undue pressure to purchase or recommend the purchase of insurance.

- "Cold lead advertising." Making use of any method of marketing which fails to disclose in a conspicuous manner that a purpose is solicitation of insurance.

The effects of the MACRA changes on the marketing and sale of Medicare supplement insurance coverage in the state are as follows:

- MACRA does not close previous blocks of business.

- Those persons who became eligible for Medicare prior to January 1, 2020, and who have a policy that covers the Part B deductible may keep that policy so long as they continue to pay premium.

- Those persons who became eligible for Medicare prior to January 1, 2020 and want to change coverage on or after January 1, 2020 are eligible for policies that cover the Part B deductible or

policies that do not cover Part B deductible so long as they meet underwriting standards or are eligible for a guaranteed issue policy.

- Those persons who become eligible for Medicare on or after January 1, 2020, may not be sold a Medicare supplement policy that covers the Part B deductible.

Those insurance companies or agents that provide information contrary to the above or are engaging in acts or practices that are prohibited as outlined above, are in violation of the law. Some may assert that MACRA changes will cause premium rates for their current plan to increase disproportionally, however, without a proper factual basis such assertions are misleading and would be inappropriate and prohibited.

Potential Penalties:

Any person who "knowingly" sells or issues a Medigap insurance policy in violation of the federal minimum standards is subject to a federal civil money penalty of up to $25,000 on the issuer ($15,000 on a seller who is not the issuer) for each individual violation (per each individual Medigap insurance policy). See 42 CFR 1003.1100 – 1120 (October 2018). In addition, violators are also subject to state fines and penalties for violations of applicable state insurance laws.

If there are any questions on the above, please contact [*insert appropriate state information*].

Agenda Item #5

Federal Legislative Update

MACRA Implementation – Medigap Changes

(as of July 2019)