

**PROJECT HISTORY - 2016**

**MODEL REGULATION TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE  
MINIMUM STANDARDS MODEL ACT (#651)**

**1. Description of the Project, Issues Addressed, etc.**

Changes were made to the *Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)* in response to a federal law, the Medicare Access and CHIP Reauthorization Act of 2015 (Public law 114-10). The law prohibits first dollar Part B coverage on Medicare Supplement (Medigap) Plan C & Plan F to new eligible Medicare beneficiaries on or after Jan. 1, 2020.

**2. Name of Group Responsible for Drafting the Model and States Participating**

Medigap (B) Subgroup of the Senior Issues (B) Task Force

|                      |          |               |
|----------------------|----------|---------------|
| Missouri, Chair      | Florida  | Mississippi   |
| Nebraska, Vice Chair | Iowa     | New Hampshire |
| Alabama              | Illinois | New York      |
| Arizona              | Kentucky | Oregon        |
| Delaware             | Maryland | Virginia      |

**3. Project Authorized by What Charge and Date First Given to the Group**

The Senior Issues (B) Task Force appointed the Medigap Subgroup at the 2015 Summer National Meeting to address the changes to Medigap as mandated by Public law 114-10. The charge given to the Subgroup called to make the necessary changes to the *Medicare Supplement Insurance Minimum Standards Model Act (#650)*, Model #651 and other materials on Medigap to comply with the law.

**4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated**

The Subgroup determined no changes were necessary to Model #650. Changes were made to Section 9.1 and Section 9.2 of Model #651. The Centers for Medicare and Medicaid Services (CMS) was consulted during the drafting process. Interested parties, including industry and consumer groups, were able to comment on each draft. The Subgroup considered and accepted several comments made to the draft, including comments from industry and consumer groups. Interested parties that commented on the drafts included: CMS; America's Health Insurance Plans (AHIP); UnitedHealth Group; and California Health Advocates (CHA).

**5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)**

The Subgroup met nine (9) times via open conference calls (Feb. 22, 2016; Feb. 8, 2016; Feb. 1, 2016; Jan. 4, 2016; Dec. 14, 2015; Nov. 30, 2015; Nov. 2, 2015; Oct. 19, 2015; and Oct. 5, 2015). The Subgroup adopted its changes on Feb. 22, 2016 and forwarded the revised draft Model #651 to the Senior Issues (B) Task Force for its consideration. The Senior Issues (B) Task Force held an exposure period from March 2, 2016 to March 18, 2016. A draft was circulated to interested parties, including industry and consumer groups, and was posted to the NAIC website. The Task Force considered each comment that was received.

The Senior Issues (B) Task Force adopted the revised drafts of Model #651 at the 2016 Spring National Meeting on April 3, 2016. The Health Insurance and Managed Care (B) Committee adopted the revised drafts of Model #651 on April 4, 2016.

**6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)**

None

**7. Any Other Important Information (e.g., amending an accreditation standard).**

The changes made by Public Law 114-10 to first dollar Part B coverage on Medigap Plans C & F to new eligible Medicare beneficiaries on or after Jan. 1, 2020 also apply to the waiver states (Massachusetts, Minnesota, and Wisconsin).

For high deductible plans, if a policyholder meets the high deductible amount with all Part A out of pocket expenses and then incurs Part B deductible expenses these expenses will not count toward the policyholder's high deductible nor be covered expenses.

**PROJECT HISTORY - 2008**

**MODEL REGULATION TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT (#651)**

**1. Description of the Project, Issues Addressed, etc.**

Revision of the Medicare supplement model regulation to comply with the requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA) and the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). Both laws require NAIC action to revise the model regulation by October 31, 2008.

**2. Name of Group Responsible for Drafting the Model and States Participating**

Senior Issues (B) Task Force

|             |               |                |
|-------------|---------------|----------------|
| Wisconsin   | Iowa          | North Carolina |
| Louisiana   | Kansas        | North Dakota   |
| Alabama     | Kentucky      | Ohio           |
| Arkansas    | Maine         | Oklahoma       |
| California  | Maryland      | Oregon         |
| Colorado    | Michigan      | Pennsylvania   |
| Connecticut | Minnesota     | Rhode Island   |
| Delaware    | Mississippi   | South Dakota   |
| Florida     | Nebraska      | Texas          |
| Hawaii      | Nevada        | Utah           |
| Idaho       | New Hampshire | Vermont        |
| Illinois    | New Mexico    | Virginia       |
| Indiana     | New York      | West Virginia  |

**3. Project Authorized by What Charge and Date First Given to the Group**

The Senior Issues Task Force has a standing charge to “Review the Medicare Supplement Insurance Minimum Standards Model Act and Regulation to determine if amendments are required based on changes to federal law and revise if necessary.”

**4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated**

The Senior Issues Task Force drafted both sets of revisions to the model simultaneously. The Centers for Medicare and Medicaid Services (CMS) was consulted during the drafting process. Interested parties, including industry and consumer groups, were able to comment on each draft. The Task Force considered and accepted several comments made to the draft, including comments from industry and consumer groups. Interested parties that commented on the drafts included CMS, America’s Health Insurance Plans (AHIP) and UnitedHealth Group.

**5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)**

The Senior Issues Task Force held an exposure period from July 17, 2008, to July 29, 2008. A draft was circulated to interested parties, including industry and consumer groups, and was posted to the NAIC website. The Task Force considered each comment that was received.

The Senior Issues Task Force approved the revisions on an open conference call on August 5, 2008. The Health and Managed Care (B) Committee then approved the model revisions on an open conference call on September 10, 2009.

**6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group’s response)**

None

**7. Any Other Important Information (e.g., amending an accreditation standard).**

The implementation date for GINA Medigap requirements is May 21, 2009. However, GINA states that states will not be considered out of compliance with federal Medicare supplement requirements until July 1, 2009. States must adopt the GINA-related revisions to the model (contained in Section 24) by July 1, 2009, or they may be pre-empted by the federal government in this area.

The model revisions required by MIPPA, as well as the model revisions approved by the NAIC in March 2007, must be adopted by states by September 24, 2009 (with the exception of Massachusetts, Minnesota and Wisconsin.). The effective date for new (modernized) plans to be sold is June 1, 2010.

**PROJECT HISTORY - 2007**

**MODEL REGULATION TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT (#651)**

**1. Description of the project, issues addressed, etc.**

The President signed the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) on Dec. 8, 2003. Among other things, it added Part D to Medicare, providing prescription drug benefits. It also required the NAIC to make several changes to the Medicare Supplement Model Regulation to conform to the federal law.

These are the specific revisions to the model regulation required by MMA:

1. Add two new plans (called K and L in the amendments) to the standard Medigap plans A through J;
2. Revise the standard H, I and J plans to eliminate prescription drug coverage for those who enroll in Medicare Part D;
3. Prohibit the sale of prescription drug coverage in Medigap after Dec. 30, 2005 (i.e. when Part D comes into effect);
4. Make any other changes to the model regulation that might be required as a result of the legislation.

The task force only considered changes that are directly related to the unambiguous changes NAIC needs to make as a result of the bill, with some minor exceptions for clarification purposes.

**2. Name of group responsible for draft the model:**

Senior Issues (B) Task Force

**States Participating:**

|                     |               |
|---------------------|---------------|
| Wisconsin, Chair    | Michigan      |
| Florida, Vice-Chair | Missouri      |
| Alabama             | Mississippi   |
| Arkansas            | Nebraska      |
| California          | New Mexico    |
| Colorado            | North Dakota  |
| Connecticut         | Ohio          |
| Delaware            | Oklahoma      |
| Illinois            | Pennsylvania  |
| Iowa                | Rhode Island  |
| Kansas              | Utah          |
| Kentucky            | Vermont       |
| Louisiana           | Virginia      |
|                     | West Virginia |

**3. Project authorized by what charge and date first given to the group:**

The task force has the following charges:

Review the Medicare Supplement Insurance Minimum Standards Model Act and Regulation to determine if amendments are required based on changes to federal law. Report by Winter 2003 National Meeting.

Review the Medicare Supplement Insurance Minimum Standards Model Act and Regulation to determine if amendments are required based on changes to federal law and revise if necessary. Report by 2004 Winter National Meeting.

These are standing charges for the task force. The bill was signed on Dec. 8, 2003, and the task force began discussions immediately. The bill provided a nine-month time frame for the NAIC to amend its model regulation to conform to MMA.

**4. A general description of the drafting process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.**

The model was drafted by the task force, in consultation with a “statutory working group.” Under MMA, by reference to the Social Security Act, the NAIC was directed to “consult with a working group composed of representatives of issuers of medicare supplemental policies, consumer groups, medicare beneficiaries, and other qualified individuals. Such representatives shall be selected in a manner so as to assure balance representation among the interested groups.”

The task force appointed the following members to the statutorily required working group:

AARP (represented by Gerry Smolka)  
California Health Advocates (represented by Bonnie Burns)  
Center for Medicare Advocacy (represented by Vicky Gottlich)  
Consumers Union (represented by Gail Shearer)  
Families USA/Health Assistance Partnership (represented by Kevin Simpson)  
Medicare Rights Center (represented by Diane Archer)  
National Association of Health Underwriters (represented by Janet Trautwein)  
National Council on Aging (represented by Howard Bedlin)  
SHIP Steering Committee (represented by Carla Obiol)

Blue Cross Blue Shield of Florida (represented by Randy Kammer)  
Central States Health & Life Company of Omaha (represented by Rebecca Smart)  
Highmark, Inc. (represented by Candy Gallaher)  
Mutual of Omaha Insurance Company (represented by Galen Ullstrom)  
United American Insurance Company (represented by Stephen Still)  
UnitedHealth Group (represented by Dotti Outland)  
WellPoint Health Networks (represented by Peggy Storey)

Numerous other interested parties participated, including industry representatives, such as the America’s Health Insurance Plans (AHIP), the Blue Cross and Blue Shield Association (BCBSA), and others.

**5. A general description of the due process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited.**

There were six drafts of the proposed amendments. Each draft was circulated for comment to interested parties prior to discussion at NAIC quarterly meetings. The task force also held one two-day interim meeting, and additional conference calls. Throughout the drafting process comments from various interest groups and organizations were received and discussed by the force.

**6. A discussion of the significant issues (items of some controversy) raised during the due process and the group’s response.**

Several issues began as controversial during the revision process but were ultimately resolved. Initially, technical concerns were expressed regarding the imprecise language used in the text of MMA. In particular, the addition of the two new Medigap plans conflicted with provisions in §1882 of the Social Security Act that expressly limited the total number of Medigap plans to “10 + 2 (high deductible plans F and J).” Thus, the task force had to consider whether the addition of the two new plans would require the elimination of two current Medigap plans, to comport with SSA. With the support of legislative history and the endorsement of CMS, the task force elected to simply add the two new plans to the existing ones, relegating the omission of amendments to SSA in this regard as a technical error, whose consequences exceeded the scope of intent by Congress in enacting MMA. Future consideration of whether to consolidate similar existing Medigap policies is pending.

Next, the task force decided against allowing current Medigap policies with prescription drug coverage to continue offering such benefits to new enrollees after December 31, 2005. Again, the text of MMA did not express the clear intent of Congress to prohibit Medigap policies from offering drug benefits after the Medicare Part D program commenced. The rationale used by the task force in refusing to exploit the ambiguity in MMA was the desire to avoid a potentially disruptive conflict between the states and CMS over interpretation of the relevant statutory language, and the ensuing confusion would harm Medigap insureds and issuers.

In another statutory interpretation conflict, the task force concluded that MMA does not prohibit issuers from offering “innovative benefits” with Medigap plans K and L, against initial CMS arguments to the contrary. CMS ultimately agreed with the task force interpretation.

Last, several of the interested parties advocated for wholesale revision of the standard Medigap plans, citing language in the Conference Committee report accompanying the enacted MMA legislation. The task force concluded that given the short timeframe involved in making these amendments (nine months from the date the president signed the bill), it would be more prudent to make only the changes clearly necessitated by MMA. As noted previously, however, the task force did agree to consider, after this amendment process was complete, additional changes to the Medigap model act and regulation to modernize the Medigap market.

**7. Any other important information (e.g., amending an accreditation standard).**

States need to adopt the amendments by Sept. 8, 2005, in order to maintain an approved regulatory program and prevent federal takeover of Medigap enforcement.

## PROJECT HISTORY - 2001

### MODEL REGULATION TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT (#651)

**1. Description of the project, issues addressed, etc.**

Amendments to the model regulation have been adopted to include changes made to the Social Security Act by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), as well as technical amendments to provisions added to the model regulation by the Balanced Budget Refinement Act of 1999 (BBRA).

**2. Name of group responsible for drafting the model:**

Medicare Supplement Working Group of the Senior Issues (B) Task Force

**3. States Participating:**

Florida, Chair, Alaska, Arkansas, Connecticut, Delaware, Indiana, Iowa, Kansas, Louisiana, Maine, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Wisconsin

**4. Project authorized by what charge and date first given to the group:**

The following charge was given to the Seniors Issues (B) Task Force in 2001: Review the Medicare Supplement Insurance Minimum Standards Model Act and Regulation to determine if amendments are required based on changes to federal law. Report by Winter 2001 National Meeting.

**5. A general description of the drafting process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.**

The working group drafted the amendments to the model regulation. The Centers for Medicare and Medicaid Services (Formerly HCFA) participated in the process. Medicare supplement insurance carriers, including UnitedHealth Group, American Republic Insurance Company, and Physicians Mutual Insurance Company participated in the process. An NAIC consumer representative also participated.

**6. A general description of the due process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited).**

The draft amendments were exposed prior to the Spring 2001 National Meeting. The draft amendments were reviewed and discussed at the Spring 2001 and Summer 2001 National Meetings. All drafts of the model were exposed for comment. Comment letters were received and considered throughout the drafting process.

**7. A discussion of the significant issues (items of some controversy) raised during the due process and the group's response.**

There were no substantive issues of controversy.