AGENDA

1. Consider Adoption of its Oct. 16, Sept. 24 and Summer National Meeting Minutes—Director Lori K. Wing-Heier (AK)

2. Hear a Federal Legislative Update—David Torian (NAIC)

3. Discuss Any Other Matters Brought Before the Task Force—Director Lori K. Wing-Heier (AK)

4. Adjournment
Agenda Item #1

Consider Adoption of the Oct. 16, Sept. 24 and Summer National Meeting Minutes
Senior Issues (B) Task Force

E-Vote

October 16, 2019

The Senior Issues (B) Task Force conducted an e-vote that concluded on Oct. 16, 2019. The following Task Force members participated: Lori K. Wing-Heier, Chair (AK); Marlene Caride, Vice Chair (NJ); Jim L. Ridling represented by Steve Ostlund (AL); Allen W. Kerr (AR); Michael Conway (CO); Andrew N. Mais represented by Paul Lombardo (CT); Trinidad Navarro represented by Susan Jennette (DE); David Altmaier (FL); John F. King (GA); Doug Ommen represented by Andria Seip (IA); Dean Cameron represented by Kathy McGill (ID); Vicki Schmidt represented by Julie Holmes (KS); James J. Donelon represented by Ron Henderson (LA); Al Redmer Jr. represented by Joy Hatchette (MD); Eric A. Cioppa represented by Marti Hooper (ME); Anita G. Fox represented by Karen Dennis (MI); Steve Kelley represented by Melinda Domzalski-Hansen (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); Barbara D. Richardson (NV); Jillian Froment represented by Laura Miller (OH); Glen Mulready represented by Andrew Schallhorn (OK); Andrew Stolfi represented by Gayle Woods (OR); Jessica Altman represented by Michael Humphreys (PA); Larry Deiter represented by Jill Kruger (SD); Kent Sullivan represented by Doug Danzeiser (TX); Todd E. Kiser (UT); Scott A. White (VA); Mike Kreidler represented by Michael Bryant (WA); Mark Afable represented by Jennifer Stegall (WI); and Jeff Rude (WY).

1. Adopted a Letter to CMS Regarding the New Medicare Plan Finder

The Task Force conducted an e-vote to consider the adoption of a letter from the Task Force to the Centers for Medicare & Medicaid Services (CMS) regarding concerns with CMS’s new Medicare Plan Finder.


Having no further business, the Senior Issues (B) Task Force adjourned.
October 16, 2019

Hon. Seema Verma -- Administrator
Centers for Medicare and Medicaid Services
Department of Health & Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Dear Administrator Verma:

The membership of the National Association of Insurance Commissioners’ (NAIC) Senior Issues Task Force (SITF) write to support the concerns expressed by state regulators, consumer advocacy groups and industry representatives regarding the new Medicare Plan Finder (Finder).

For many people with Medicare, evaluating health care and prescription drug coverage options can be a daunting task. While the Finder can be a helpful tool, this new updated version raises problems. The SITF shares many of the concerns expressed by many interested parties that this new Finder has serious inaccuracies and errors that have the potential to affect consumers, carriers and state insurance regulators.

Some examples of concerns, errors and omissions are:

- There is no Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) notice with respect to newly eligible beneficiaries on individual Medigap Plan C, Plan F and Plan High Deductible F.

- The cost comparison between Medicare Advantage (MA) and Medicare with a Medigap plan does not capture out of pocket costs – only premiums. This gives the false sense that Medigap is much more expensive overall than an MA plan.

- The total yearly estimated cost for Original Medicare and a Medigap Plan (particularly Plan F) is unreasonably high.

- The description of the Medicare Savings Program (MSP) is inaccurate since not every MSP pays for cost-sharing, which the description implies.

- General searches will not save prescription drug entries, so repeated entries will be required as needed when not doing a personalized search.

- The new Finder should allow users to sort drug plans by the “total drug and premium cost” for the plan year, as was possible with the previous version of the Finder.

- The drug plan summary lists the costs for mail order pharmacies but there is no ability to compare the mail order and retail cost of a drug, as was possible with the previous version of the Finder.
• The new Finder should add formulary information in the summary view and the ability to sort or filter plans according to this data point.

• There is no longer an option for selecting that a person gets a drug once per year, which is a common scenario for people with Medicare, as was possible with the previous version of the Finder.

• The Drug Cost information section should include a monthly cost chart, including the bar graph, which includes premiums and out-of-pocket expenses, as was possible with the previous version of the Finder.

We also encourage CMS to work with the NAIC on some of the functionality issues with the Finder when CMS updates the Finder for next year. Some of the concerns include not allowing for general searches to be saved without the creation of an account and not including an email option for consumers to view and review their comparisons, rather than the current cumbersome print option. This email option was available on the previous version of the Finder.

Coming out with a new Finder on the heels of open enrollment that has errors and omissions may discourage Medicare beneficiaries from taking advantage of reviewing their drug/medical plans. We encourage you to carefully and seriously review the concerns expressed in this letter and in the letters already sent to CMS by concerned parties and make the necessary corrections, edits and changes so that the Finder can be the truly useful tool for consumers as intended.

Sincerely,

Lori K. Wing-Heier
Chair, Senior Issues (B) Task Force
Director, Alaska Division of Insurance

cc: Brady Brookes, Deputy Administrator and Deputy Chief of Staff
Kimberly Brandt, Principal Deputy Administrator for Policy & Operations
Demetrios L. Kouzoukas, Principal Deputy Administrator of CMS and Director of the Center for Medicare
Kathryn Anne Coleman, Director, Medicare Drug & Health Plan Contract Administration Group
Jerry Mulcahy, Director, Medicare Enrollment and Appeals Group
The Senior Issues (B) Task Force met via conference call Sept. 24, 2019. The following Task Force members participated: Lori K. Wing-Heier (AK), Chair; Marlene Caride (NJ), Vice Chair; Jim L. Ridling represented by Steve Ostlund (AL); Ricardo Lara represented by Tyler McKinney (CA); David Altmaier represented by Craig Wright (FL); John F. King represented by Martin R. Sullivan Jr. (GA); Dean L. Cameron represented by Kathy McGill (ID); Stephen W. Robertson represented by Bobbi Henn (IN); Vicki Schmidt represented by Julie Holmes (KS); Nancy G. Atkins represented by Stephanie McGaughey-Bowker (KY); Al Redmer Jr. represented by Joy Hatchette (MD); Eric A. Cioppa represented by Marti Hooper (ME); Anita G. Fox represented by Renee Campbell (MI); Steve Kelley represented by Kristi Bohn (MN); Chlora Lindley-Myers (MO); Mike Causey represented by David Yetter (NC); Jon Godfread represented by Chrystal Bartuska (ND); Bruce R. Ramge represented by Martin Swanson (NE); Barbara D. Richardson represented by Jack Childress (NV); Glen Mulready represented by Ron Kreiter (OK); Andrew Stolfi represented by Gayle Woods (OR); 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 (WY). Also participating was: Martin Wojcik (NY).

1. **Discussed a Technical Change to Model #642**

David Torian (NAIC) announced a technical change to the *Limited Long-Term Care Insurance Model Act* (#642). Mr. Torian said Section 6B(3) references Section 6C(1) and Section 6C(2) but should actually reference Section 6B(1) and Section 6B(2). He said Section 6B(4) twice references Section 6C(2) but should actually reference Section 6B(2).

2. **Adopted its 2020 Proposed Charges**

Director Wing-Heier asked if anyone had any comments to the Task Force’s 2020 proposed charges. None were heard.

Director Lindley-Myers made a motion, seconded by Mr. Swanson, to adopt the Task Force’s 2020 proposed charges (Attachment). The motion passed.

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

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2020 Proposed Charges

SENIOR ISSUES (B) TASK FORCE

The mission of the Senior Issues (B) Task Force is to: 1) consider policy issues; 2) develop appropriate regulatory standards; and 3) revise, as necessary, the NAIC models, consumer guides and training material on Medicare supplement insurance, long-term care insurance (LTCI), senior counseling programs and other insurance issues that affect older Americans.

Ongoing Support of NAIC Programs, Products or Services

1. The Senior Issues (B) Task Force will:
   A. Develop appropriate regulatory standards and revisions, as necessary, to the NAIC models, consumer guides and training material on Medicare supplement insurance, senior counseling programs and other insurance issues that affect older Americans. Work with federal agencies to advance appropriate regulatory standards for Medicare supplement and other forms of health insurance applicable to older Americans. Review the Medicare Supplement Insurance Minimum Standards Model Act (#650) and the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651) to determine if amendments are required based on changes to federal law. Work with the U.S. Centers for Medicare & Medicaid Services (CMS) to revise the annual joint publication Choosing a Medigap Policy: A Guide to Health Insurance for People with Medicare.
   B. Monitor the Medicare Advantage and Medicare Part D marketplace. Assist the states, as necessary, with regulatory issues. Maintain a dialogue and coordinate with CMS on regulatory issues, including solvency oversight of waived plans and agent misconduct. Assist the states and serve as a clearinghouse for information on Medicare Advantage plan activity.
   C. Provide the perspective of state insurance regulators to the U.S. Congress, as appropriate, and CMS on insurance issues, including those concerning the effect and result of federal activity on the senior citizen health insurance marketplace and regulatory scheme. Review and monitor state and federal relations with respect to senior health care initiatives and other impacts on the states.
   D. Monitor developments concerning the State Health Insurance Assistance Programs (SHIPs), including information on legislation impacting the funding of SHIPs. Provide assistance to the states with issues relating to SHIPs and support a strong partnership between SHIPs and CMS. Provide the perspective of state insurance regulators to federal officials, as appropriate, on issues concerning SHIPs.
   E. Monitor, maintain and review, in accordance with changes to Model #651, a record of state approvals of all Medicare supplement insurance new or innovative benefits for use by state insurance regulators and others. Review state-approved new or innovative benefits and consider whether to recommend that they be made part of standard benefit plan designs in Model #651.
   F. Develop appropriate regulatory standards and revisions, as necessary, to the NAIC models, consumer guides and training material on long-term care insurance (LTCI), including the study and evaluation of evolving LTCI product design, rating, suitability and other related factors. Review the existing Long-Term Care Insurance Model Act (#640), the Long-Term Care Insurance Model Regulation (#641), the Limited Long-Term Care Insurance Model Act (#642) and the Limited Long-Term Care Insurance Model Regulation (#643) to determine their flexibility to remain compatible with the evolving delivery of long-term care (LTC) services and remain compatible with the evolving LTCI marketplace. Work with federal agencies as appropriate.
   G. Examine examples of health-related financial exploitation of seniors and work with other NAIC committees, task forces and working groups on possible solutions.

NAIC Support Staff: David Torian

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The Senior Issues (B) Task Force met in New York, NY, Aug. 3, 2019. The following Task Force members participated: Lori K. Wing-Heier, Chair (AK); Marlene Caride, Vice Chair (NJ); Jim L. Ridling represented by Steve 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 Brian Bressman (DC); Trinidad Navarro represented by Fleur McKendell (DE); David Altmaier represented by Chris Struk (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 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 Kevin Beagan (MA); Al Redmer Jr. represented by Paula Keen (MD); Eric A. Cioppa represented by Marti Hooper (ME); Anita G. Fox represented by Karen Dennis (MI); Steve Kelley represented by Grace Arnold (MN); Chlora Lindley-Myers (MO); Mike Chaney represented by Bob Williams (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 Peña (NM); Barbara D. Richardson represented by David Cassetty (NV); Glen Mulready represented by Cuc Nguyen (OK); Jessica Altman (PA); Larry Deiter represented by Jill Kruger (SD); Carter Lawrence represented by Brian Hoffmeister (TN); Kent Sullivan represented by Raja Malkani (TX); Todd E. Kiser represented by Tomasz Serbinowski (UT); Scott A. White represented by Bob Grissom (VA); Mike Kreidler represented by Mike Bryant (WA); and Mark Afable represented by Jennifer Stegall (WI).

1. Adopted its July 18, June 19 and Spring National Meeting Minutes

The Task Force met July 18, June 19 and April 6. During its July 18 and June 19 meetings, the Task Force discussed and reviewed the response letter to the U.S. House of Representatives (House) Committee on Ways and Means Chairman, Richard Neal, asking for NAIC input on possibly expanding long-term services and supports (LTSS) availability in Medigap.

Mr. Ostlund made a motion, seconded by Commissioner Caride, to adopt the Task Force’s July 18 (Attachment One), June 19 (Attachment Two) and April 6 minutes (see NAIC Proceedings – Spring 2019, Senior Issues (B) Task Force). The motion passed.

2. Continued Discussion of DNA Swabbing/Genetic Information Collection

Mr. Swanson provided the Task Force with an update from the Spring National Meeting about the 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 reminded the Task Force that some 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 but only under certain specific circumstances and only one time.

Mr. Swanson said while genetic testing is allowed in certain circumstances by Medicare, it is unclear if those limitations are being followed by these entities. He referred the Task Force to the actions taken by the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) and the fraud alert issued by the OIG. The OIG alert warns the public about a fraud scheme involving genetic testing and provides guidance on what a consumer should do.

Mr. Swanson also pointed out that these scammers are now sending genetic test kits through the mail to unsolicited consumers and using cloning technology to mask their phone numbers. He cited an example of the head of the Nebraska State Health Insurance Assistance Program (SHIP) office receiving a call from a cloned number that was registered to the Nebraska Department of Health, but it was one of these scammers.
Mr. Swanson said the OIG alert states that if a genetic testing kit is mailed to a consumer, the consumer should not accept it unless it was ordered by the consumer’s physician. The consumer should refuse the delivery or return it to the sender and keep a record of the sender’s name and the date the consumer returned the items.

Mr. Swanson suggested the Task Force study this issue and perhaps issue a consumer alert or notice. Director Wing-Heier said her state has used the Nebraska notice, edited for Alaska’s needs.

3. Heard an Update on a MACRA-Related Bulletin on Marketing Standards

David Torian (NAIC) informed the Task Force about the third Medicare Access and CHIP Reauthorization Act of 2015 (MACRA)-related bulletin. He reminded the Task Force that the NAIC has issued two other bulletins—one directed at consumers and one directed at agents and producers. He said this third bulletin is directed at marketers and the marketing standard rules.

Mr. Torian said 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 Jan. 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. He also said that 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.

Mr. Torian said that the purpose of this bulletin is to address such improper activity and that states are free to use the bulletins as they see fit, to edit as necessary to comport to their state’s needs.

4. Heard a Federal Legislative Update

Mr. Torian reminded the Task Force that at the Spring National Meeting, he informed the Task Force that funding for SHIP was fully funded for fiscal year (FY) 2019 at $49,115,000 and that FY 2019 runs through Sept. 30, 2019. He also reminded the Task Force that the President’s FY 2020 budget cut SHIP funding to $36,115,000—a cut of $13 million from the FY 2019 level.

Mr. Torian said that on June 19, the House passed its FY 2020 Labor, Health and Human Services and Education appropriations bill, and it included an increase for SHIP—funding SHIP at $55 million, an increase of $18,885,000 over FY 2019. He said that the Senate has not yet taken any action on its appropriation bills. He said that the NAIC will continue to strongly support SHIP funding and will continue to urge Congress to pass full funding for this vital and important program.

Mr. Torian informed the Task Force about legislation introduced in June that would provide for patient improvements and rural and quality improvements under Medicare. He said the bill, the Beneficiary Education Tools, Telehealth and Extenders Reauthorization Act of 2019 (H.R. 3417), includes provisions that would increase funding for consumer assistance programs, including SHIP, to help with enrollment and benefits questions for those on Medicare. He said the NAIC will keep an eye on this bill.

Mr. Torian asked Task Force members to review the map of states and the progress of MACRA implementation by the states and to inform him if there are any updates to the map.

5. Heard a Presentation from the SOA on health insurance research

Dale Hall (Society of Actuaries—SOA) discussed the objective research ideas and the SOA study exploring new long-term care (LTC) financing options. He discussed the background and processes used and encouraged the Task Force to go to the SOA’s LTC research page on its website.

Mr. Hall highlighted two products. One is LifeStage Protection. This is a single insurance policy that starts as term life insurance during a consumer’s younger, prime income-earning years and then switches to a long-term care insurance (LTCI) policy when a consumer is older. The second product is Retirement Plus, which is a tax-
beneficial 401(k) type of retirement account that has expanded contribution limits, allows flexible usage of account funds and builds in insurance elements for LTC.

Mr. Hall discussed the research methodology. He explained the sample consumers used in the SOA’s studies are at least high school graduates, between the ages of 35 to 55, employed and offered benefits, have household incomes between $50,000 and $499,999, and describe their current health as fair. He said during analysis, data was weighted by gender and income to reflect population and qualification incidence.

Steve Schoonveld (SOA) provided the Task Force a primer on the hybrid LTCI market. He said the LTCI market is robust and said hybrid is also called “combination” or “asset-based.” He said the LTCI market includes an eight-product set of consumer solutions to include: 1) traditional LTCI; 2) short-term care insurance; 3) linked benefit life/LTC product; 4) LTC rider on life chassis; 5) chronic illness rider on life chassis; 6) group/multi-life products; 7) LTC annuities; and 8) impaired annuities.

Mr. Schoonveld said that 85% of LTC product sales in 2018 were hybrid LTC products and that there were two main types of life/LTC hybrid products: 1) chronic illness riders; and 2) LTC. He said according to LIMRA, sales of these products reached 404,368 new policies.

Mr. Schoonveld said when he spoke before the Task Force in 2016, there were 228,000 policies with LTC solutions in 2015 and now, in 2019, there were 461,000 policies with an LTC solution in 2018. He said the drop in new premiums was due to higher sales of combination policies that involve recurring premiums, instead of a one-time payment. He said spreading payments out over a longer period is more affordable for a larger swath of consumers. He said, according to LIMRA, combination products represented 27% of the overall U.S. individual life insurance market in 2018.

Matt Winegar (Pacific Life Insurance Company) explained how hybrid products work. He said there are various levels of LTC benefits, such as accelerated death benefit, extended benefits and inflation benefits. He said these products ultimately pay a death benefit, a return of premium or LTC benefits, such as cash value, partial or full return of premium. He said there are various funding mechanisms—such as no charge or discounted death benefit (chronic illness riders only), single, limited or lifetime premiums/charges—or many products are fully guaranteed.

Mr. Winegar said many products have streamlined or simplified underwriting and that tax-qualified benefits use the same benefit triggers and covered services as traditional LTC. He said that these products have indemnity and reimbursement benefit designs and that LTC acceleration and extension riders are filed as health (LTC) products. He also said these products offer various design options to meet a variety of consumer needs, basing it upon demographic, income/asset levels, level of family support and other factors.

Robert Eaton (Milliman) provided the Task Force actuarial considerations of these hybrid products. He said the blend of a life (or annuity) insurance contact and an LTC contract provide reduced volatility of earnings, and have provisions for adverse deviation and principles-based reserving (PBR).

Mr. Eaton cited statistics of the longevity concerns of some clients. He said clients with $250,000 of investable assets were concerned with health care/LTC expenses (57%), outliving savings (37%), their investments decline in value (31%), planning for retirement (30%) and market volatility (29%).

Mr. Schoonveld discussed the impediments of hybrid products: 1) LTC special training discourages advisor participation; 2) Partnership program requirements are inconsistent; 3) traditional LTC regulations do not apply to hybrid products; and 4) point-of-sale disclosures are not customized for hybrid products.

Mr. Henderson said that traditional LTC was sold as a solid product, actuarial sound, and that 30 years later, the traditional LTC market is in trouble. He asked about the reserves of the hybrid products and if there are greater opportunities to fund claims due to life insurance reserves and health LTC reserves. Mr. Winegar said a certain amount of money is paid out, whether upon death or surrender, so the payout is known quantity.
Mr. Lombardo asked about the difference in lapse rates between hybrid products and traditional LTC. Mr. Winegar said it would depend on how they are sold. Mr. Schoonveld said that the hybrid or combination product is not a lapse product because there is a return on these products.

Mr. Lombardo further asked about the differences in premiums. Mr. Schoonveld said the question is based upon affordability. He said it is not what a person pays but what a person gets. He said with traditional LTC, a person pays premiums, but if the policy is not used, then consumers do not get their money back. He said with hybrid products, consumers get back something, even if they do not use the product. He said that the hybrid product may cost a little more but emphasized the value a person gets out of the hybrid product.

Mr. Tretler asked Mr. Schoonveld to clarify his response regarding returns. Mr. Schoonveld said returns can vary based upon the myriad of solutions carriers can offer with hybrid products.

Mr. Henderson said he has serious concerns about high lapse rates and whether these new products could address that. Ms. Mealer said that the new products have the ability to reserve and price better, and that would help with potential lapse rates.

6. Discussed Other Matters

Ms. Mealer said she has been hearing inquiries from insurers whether they can simply quit offering Medigap Plan C or Medigap Plan F. She said the minimum federal standards are clear that if insurers offer the base Medigap plan, they must offer guaranteed issue plans, and that means they must offer Plan C or Plan F. She said that include Plan D or Plan G for those who are deemed newly eligible.

Having no further business, the Senior Issues (B) Task Force adjourned.
Agenda Item #2

Federal Legislative Update
Long-Term Care Innovation (B) Subgroup: Federal Policy Options to Present to Congress

Adopted by Senior Issues Task Force at 2017 Spring National Meeting

As part of the NAIC’s Retirement Security Initiative and ongoing focus on long term care insurance issues, the NAIC’s Long Term Care Innovations (B) Subgroup (“the Subgroup”) held 14 open calls and meetings, and continues such outreach, to gain insights from stakeholders on various approaches to financing long term care (LTC). The goal of this work is to identify and develop actionable, realistic policy options for consideration by state regulators, state legislators, the NAIC as a body, federal agencies, and Congress, that could increase the number of affordable asset protection product options available for middle-income Americans, potentially paving the way for the private market to play a more meaningful role in financing the LTC needs of our society.

Broadly speaking, some of the issues and questions the subgroup examined include the role for the private market in assisting people in financing their LTC needs; the steps that could be taken to encourage more participation by insurance companies or other innovators in this market; the future design of LTC insurance (LTCI) products; other asset protection products and the role they can and do play in financing LTC; the types of products most appealing to consumers; the types of products insurance companies would be interested in selling; the role employers should play in terms of offering products to assist in financing LTC services; the legal and regulatory barriers that may need to be overcome and any federal or state actions that could be taken to increase the number of options available to consumers to help them finance their potential LTC needs.

Although the focus of the Subgroup is on the private LTC insurance market, it is important to understand that no one is suggesting that private LTC insurance is the answer to the problem of how we as a society are going to finance the LTC needs of our citizens. We still expect Medicaid LTC costs to continue growing and recognize that many of the solutions being discussed by the Subgroup will not fully address long duration LTC needs. But we believe the private market can be part of the solution.

The following is a list of federal policy changes that have been raised by various stakeholders, submitted to all Subgroup members for a 30-day comment period, vetted in the Subgroup during a 2-hour open conference call and reviewed by NAIC staff. The Subgroup believes these federal policy changes could help to increase private LTC financing options for consumers. Ultimately, any final recommendations to the federal government will need to be approved by the NAIC’s Government Relations Leadership Council. The federal laws primarily identified by stakeholders that would require changes include the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Deficit Reduction Act of 2005 (DRA).

- **Option 1:** Permit retirement plan participants to make a distribution from 401(k), 403(b) or Individual Retirement Account (IRA) to purchase LTCI with no early withdrawal tax penalty. Related considerations include whether premium payments should be made directly from the retirement plan to the insurer; allowing purchase of combination or hybrid products as well as traditional LTCI; whether premium payments would be counted for purposes of satisfying the minimum distribution requirements; and permitting tax-favored contributions and distributions to pay for long term care services and supports or LTC insurance including allowances of LTCI as a plan investment.

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• **Option 2: Allow Creation of LTC Savings Accounts, similar to Health Savings Accounts (HSAs) and/or Enhance Use of HSAs for LTC Expenses and Premiums.** HSAs are tax-advantaged medical savings accounts available to taxpayers who are enrolled in a high-deductible health plan (HDHP). The funds contributed to an account are not subject to federal income tax at the time of deposit. Advantages of HSAs include: 1) the account is tax-advantaged, meaning that money goes into the account before tax, thereby incenting savings; 2) the funds roll over from one year to the next; 3) the money can be invested in order to gain returns from stocks or other financial instruments, which helps the account grow more quickly; and 4) money withdrawn (including any investment growth) for approved expenses (which include LTCI premiums under current law) is tax-free. Consideration should be given to stand-alone accounts which could be used for LTC expenses and LTCI premiums. Such accounts should not be conditioned upon having a HDHP, since health insurance coverage generally does not cover LTC costs. Consideration also should be given to enhancing use of HSAs such as allowing an additional contribution (similar to a “catch-up contribution”) to HSAs for owners of LTCI.

• **Option 3: Remove the HIPAA requirement to offer 5% compound inflation with LTCI policies and remove the requirement that DRA Partnership policies include inflation protection and allow the States to determine the percentage of inflation protection.** In an LTCI policy with inflation protection, the LTC benefit increases each year at a specified rate; the aim of inflation protection is to ensure that the value of the benefit keeps up with inflation. Inflation protection substantially increases LTCI premiums. For tax-qualified policies and those governed by the NAIC Model Regulation, a 5% inflation protection option must be offered, although a purchaser may choose not to take it. However, if the purchaser is under 75, they must accept inflation protection in order for the policy to be Partnership qualified. For group coverage, this option must be offered to the group policyholder (usually an employer), but it is not generally required that it be offered to each individual group member, although some states require this as well. Removal of the requirement that insurers offer 5% compound inflation with LTCI policies and the requirement that Partnership policies include inflation protection would increase insurer flexibility when designing products and could lead to lower premium costs. At the same time, consideration should be given to requiring an offering of some type of inflation protection to ensure consumers continue to have the option to protect themselves against increasing LTC costs. [Note: this would require both federal changes, changes to the NAIC models, and adoption of revised NAIC models by states.]

• **Option 4: Allow flexible premium structures and/or cash value beyond return of premium (HIPAA and DRA).** Flexible premium policies with clear consumer disclosures and protections built in could increase consumer choice and flexibility by allowing prefunding for LTC needs under a variety of premium payment patterns. Cash value or cash surrender value is the amount of money the insurance company pays a policyholder or beneficiary when they terminate a life insurance policy or annuity contract that has a cash value feature. Federal law (HIPAA) prohibits tax qualified LTCI policies (but not hybrid products) from containing a cash value feature. Prohibiting cash value creates a “use it or lose it” design for LTCI, because a policyholder only receives a
benefit from their policy if they need LTC services. [Note: some flexible premiums structures may be permissible under current federal law, but they are limited by the prohibition on cash value.]

- **Option 5: Allow products that combine LTC coverage with various insurance products (including products that “morph” into LTCI).** Many stakeholders emphasized the need for regulatory changes at the federal level to allow for LTCI innovation and market expansion. One consistent view of stakeholders is the need to expand products that can address a consumer’s needs over time. Products that offer life, disability, critical illness, supplemental, and other benefits could be allowed in various combinations with or for conversion to LTCI, such as after the policyholder reaches a certain age. Legislative changes specifically allowing this type of product would be required for pertinent federal tax and NAIC governing documents.

- **Option 6: Support innovation by improving alignment between federal law and NAIC models (HIPAA and DRA).** HIPAA and the DRA require that LTC policies comply with specific provisions of outdated versions of the NAIC model act and regulation. The NAIC regularly updates its models, and this may result in confusion as the NAIC models evolve while federal law continues to reference old models. Therefore, it may make sense for federal law to reference and require compliance with pertinent provisions of the “current” version of the NAIC model for newly issued contracts (with appropriate transition rules to address model amendments) rather than require compliance with specific provisions of a specific version of the model. This would allow federal law to evolve as the NAIC, a collaborative body with active involvement of consumer and industry representatives, updates the models as needed. This would increase the flexibility of federal law to adapt to the evolving LTC market and regulatory requirements and reduce confusion and possible inconsistencies between state and federal law.

- **Option 7: Create a more appropriate regulatory environment for Group LTCI and worksite coverage (HIPAA and DRA).** Ideas for consideration could include addressing concerns that may prevent an employer from providing LTCI on an opt-out basis by a) providing a safe harbor to limit the employer’s fiduciary liability and b) allowing an employer to offer expanded “catch-up” contributions; and/or permitting LTCI to be available for purchase through cafeteria plans.

- **Option 8: Establish more generous federal tax incentives.** Ideas for consideration include allowing a full federal tax deduction for LTCI premiums (rather than for expenses over 7.5-10% of Adjusted Gross Income) each year an LTCI policy is in force and/or allowing purchases of LTCI under cafeteria plans and from FSAs (consideration may be given to whether tax incentives should be income-based or means tested to focus on lower and middle-income Americans who may not otherwise purchase a LTCI policy); and/or allowing shorter maximum benefit plans (<1 year) to be tax qualified to incent market expansion through lower-priced, shorter duration products.
• **Option 9: Explore adding a home care benefit to Medicare or Medicare Supplement and/or Medicare Advantage plans.** Medicare provides extensive acute care coverage but more limited post-acute coverage (home health and skilled nursing facility care). Medicare Advantage and Medigap plans fill the gaps in Medicare. But most LTC services are not covered by Medicare, leaving a considerable gap in coverage for post-acute care. The most comprehensive Medicare Advantage and Medigap plans do not cover LTC services, other than the daily Medicare co-payment for the 21st to 100th day of Medicare covered skilled care; they do not cover intermediate care, assisted living, Alzheimer's, custodial or adult day care. Medigap and Medicare Advantage plans only supplement Medicare covered nursing home care on a temporary basis and help with hospice coverage. There has been discussion of adding either something akin to a long-term care benefit or, less extensive, new home and community-based benefits either to Medicare (which would affect supplemental carriers) or to Medicare Advantage and/or Medigap plans. If new benefits were provided in supplemental coverage it could make those products more expensive, though that increased cost might be offset by savings from delaying or preventing the use of more expensive institutional care. [Note: this would require federal changes to Medicare, changes to the NAIC models governing Medigap benefits, and adoption of revised NAIC models by states.]

• **Option 10: Federal education campaign around retirement security and the importance of planning for potential LTC needs.** The federal government could provide funding and partner with states to provide education to consumers about retirement security. Such a campaign would focus on encouraging people to think about their future retirement and long-term care needs and provide education on the array of private products available to help finance these costs.
Improving the Affordability of Long-Term Care Insurance

The Problem:

• 70% of adults over the age of 65 develop severe long-term and support (LTSS) needs because of a condition like Alzheimer’s.¹
• About half of senior citizen households have insufficient financial assets to fund a home health aide for one year.²
• With Medicare not covering most long-term care services, many seniors would benefit from private long-term care (LTC) insurance.
• LTC premiums can be expensive.
  ◦ Broadening the risk pool and increasing enrollment will help to drive down premiums, making LTC insurance more appealing.

The Solution:

• Allow retirement account dollars to be used to buy long-term care insurance so families can better plan for LTSS needs.
• The proposal would:
  ◦ Allow individuals to withdraw funds from their 401K³ and IRA accounts to pay for long-term care insurance without being subject to the 10% early withdrawal penalty tax.
  ◦ Exclude the withdrawal from income tax to the extent it’s used to pay for long-term care insurance, up to $2,000 annually per individual.
• This proposal would extend a similar benefit to long-term care insurance that is already available for life insurance.

Comments to Sen. Toomey’s draft proposal may be sent to Danielle DuBose at Danielle_DuBose@toomey.senate.gov
To amend the Internal Revenue Code of 1986 to expand the use of retirement plan funds to obtain long-term care insurance, and for other purposes.


IN THE SENATE OF THE UNITED STATES

Mr. TOOMEY introduced the following bill; which was read twice and referred to the Committee on ____________________

A BILL

To amend the Internal Revenue Code of 1986 to expand the use of retirement plan funds to obtain long-term care insurance, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. LONG-TERM CARE CONTRACTS PURCHASED
WITH RETIREMENT PLAN DISTRIBUTIONS.

(a) IN GENERAL.—Section 402 of the Internal Re-
venue Code of 1986 is amended by adding at the end the
following new subsection:

“(m) DISTRIBUTIONS WITH RESPECT TO LONG-
TERM CARE INSURANCE.—
“(1) IN GENERAL.—Gross income of an individual for the taxable year does not include any distribution from an eligible retirement plan to the extent that the aggregate amount of such distributions does not exceed the amount paid by such individual during the taxable year for a qualified long-term care insurance contract (as defined in section 7702B(b)) covering qualified long-term care services (as defined in section 7702B(c)) for the individual, the individual’s spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of the individual.

“(2) LIMITATION.—

“(A) IN GENERAL.—The amount excluded from gross income under paragraph (1) for any taxable year shall not exceed $2,000.

“(B) ADJUSTMENT FOR INFLATION.—

“(i) IN GENERAL.—In the case of any taxable year beginning after December 31, 2020, the $2,000 amount in subparagraph (A) shall be increased by an amount equal to—

“(I) such dollar amount, multi-
“(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2019’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.

“(ii) Rounding.—If any increase determined under clause (i) is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10.

“(3) Eligible Retirement Plan.—For purposes of this subsection, the term ‘eligible retirement plan’ means any plan which—

“(A) is described in clause (i),(ii), (iv), (v), or (vi) of subsection (c)(8)(B), or

“(B) is a defined contribution plan described in clause (iii) of subsection (c)(8)(B).

“(4) Distributions Must Otherwise Be Includible.—Rules similar to the rules of subsection (l)(3) shall apply for purposes of this subsection.

“(5) Separately Stated Portions of a Contract.—For purposes of this subsection, the amount paid during a taxable year for a qualified long-term care insurance contract (as defined in sec-
tion 7702B(c)) includes premiums paid and charges assessed during such taxable year for long-term care insurance coverage which is treated as a separate contract under section 7702B(e)(1), if such separate contract is a qualified long-term care insurance contract (as so defined).

“(6) Coordination with Other Deductions.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(l) or 213.”.

(b) Conforming Amendments.—

(1) Section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 is amended by striking “‘or’” at the end of subclause (IV), by striking “‘and’” at the end of subclause (V) and inserting “‘or’”, and by adding at the end the following new subclause:

“(VI) as provided in section 402(m), and’’.

(2) Section 403(b)(11) of such Code is amended by striking “‘or’” at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting “‘, or’”, and by inserting after subparagraph (C) the following new subparagraph:

“(D) for distributions to which section 402(m) applies.’’.
(3) Section 457(d)(1)(A) of such Code is amended by striking “or” at the end of clause (ii), by striking the comma at the end of clause (iii) and inserting “, or”, and by adding at the end the following new clause:

“(iv) as provided in section 402(m),”.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions received after the date of the enactment of this Act.
MACRA info on NAIC website, including all adopted bulletins:

https://content.naic.org/article/notice_macra_goes_effect_january_1_2020.htm