2020 Summer National Meeting
Virtual Meeting

REGULATORY FRAMEWORK (B) TASK FORCE
Tuesday, August 4, 2020
11:00 a.m. – 12:30 p.m. ET / 10:00 - 11:30 a.m. CT / 9:00 – 10:30 a.m. MT / 8:00 – 9:30 a.m. PT
WebEx Event

ROLL CALL

Michael Conway, Chair Colorado Steve Kelley Minnesota
Bruce R. Range, Vice Chair Nebraska Chlora Lindley-Myers Missouri
Jim L. Ridling Alabama Chris Nicolopoulos New Hampshire
Lori K. Wing-Heier Alaska Mike Causey North Carolina
Elizabeth Perri American Samoa Jon Godfread North Dakota
Alan McClain Arkansas Glen Mulready Oklahoma
Ricardo Lara California Andrew R. Stolfi Oregon
Karima M. Woods District of Columbia Jessica K. Altman Pennsylvania
David Altmaier Florida Raymond G. Farmer South Carolina
Dean L. Cameron Idaho Larry D. Deiter South Dakota
Robert H. Muriel Illinois Todd E. Kiser Utah
Doug Ommen Iowa Kent Sullivan Texas
Vicki Schmidt Kansas Scott A. White Virginia
Sharon P. Clark Kentucky Mike Kreidler Washington
Eric A. Cioppa Maine James A. Dodrill West Virginia
Gary Anderson Massachusetts Mark Afable Wisconsin

NAIC Support Staff: Jolie H. Matthews/Jennifer R. Cook

AGENDA

1. Consider Adoption of its Feb. 20, 2020, and 2019 Fall National Meeting Minutes
   —Commissioner Michael Conway (CO)

2. Consider Adoption of its Subgroup and Working Group Reports
   a. Accident and Sickness Insurance Minimum Standards (B) Subgroup
      —Commissioner Glen Mulready (OK) and TBD
   b. ERISA (B) Working Group—Robert Wake (ME)
   c. HMO Issues (B) Subgroup—Scott A. White (VA) and Don Beatty (VA)
   d. MHPAEA (B) Working Group—Commissioner Jessica K. Altman (PA) and Katie Dzurec (PA)
   e. Pharmacy Benefit Manager Regulatory Issues (B) Subgroup
      —Commissioner Andrew R. Stolfi (OR) and TK Keen (OR)

3. Hear an Update on the Center on Health Insurance Reforms’ (CHIR’s) Work Related to the Federal
   Affordable Care Act (ACA)—Justin Giovannelli (CHIR, Georgetown University Health Policy Institute)

4. Hear a Panel Presentation on Health Care Sharing Ministries—Joel Noble (Samaritan Ministries International)
   and Justin Giovannelli (CHIR, Georgetown University Health Policy Institute)

5. Hear a Discussion on Premium Holidays, Early Medical Loss Ratio (MLR) Rebate Payments and Adjustments
   to Cost-Sharing Benefits as a Result of Fewer Claim Filings in 2020 Due to COVID-19—Jason Levitis (Levitis
   Strategies, LLC) and Randy Pate (Center for Consumer Information and Insurance Oversight—CCIIO)

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6. Discuss Any Other Matters Brought Before the Task Force—Commissioner Michael Conway (CO)

7. Adjournment
Agenda Item #1

Consider Adoption of its Feb. 20, 2020 and 2019 Fall National Meeting Minutes
—Commissioner Michael Conway (CO)
The Regulatory Framework (B) Task Force met via conference call Feb. 20, 2020. The following Task Force members participated: Michael Conway, Chair (CO); Bruce R. Ramge, Vice Chair, represented by Martin Swanson (NE); Lori K. Wing-Heier represented by Jacob Lauten (AK); Jim L. Ridling represented by Anthony Williams (AL); Allen W. Kerr represented by Mel Anderson and William Lacy (AR); Ricardo Lara represented by Tyler McKinney (CA); David Altmaier represented by Chris Struk (FL); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Kathy McGill, Fernanda Vallejo and October Nickel (ID); Robert H. Muriel represented by Eric Anderson and Sara Stanberry (IL); Vicki Schmidt (KS); Sharon P. Clark (KY); Gary Anderson represented by Kevin Beagan (MA); Steve Kelley represented by Grace Arnold (MN); Chlora Lindley-Myers (MO); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Chrystal Bartuska and Sara Gerving (ND); Alexander K. Feldvebel represented by Karen McCallister (NH); Andrew R. Stolfi represented by Gayle L. Woods (OR); Jessica K. Altman represented by Michael Humphreys and Katie Dzurec (PA); Raymond G. Farmer represented by Shari Miles (SC); Larry D. Deiter represented by Jill Kruger (SD); Kent Sullivan represented by Rachel Bowden and Matthew Tarpley (TX); Todd E. Kiser represented by Jaakob Sundberg and Heidi Clausen (UT); Scott A. White represented by Yolanda Tennyson (VA); Mike Kreidler represented by Molly Nollette (WA); Mark Afable represented by Nathan Houdek and Jennifer Stegall (WI); and James A. Dodrill represented by Ellen Potter and Tonya Gillespie (WV).

1. Appointed the MHPAEA (B) Working Group and Adopted its 2020 Revised Charges

Commissioner Conway said that prior to the conference call, NAIC staff distributed revised Task Force 2020 charges. He explained that the revised charges add charges for the MHPAEA (B) Working Group. He said that during this call, the Task Force will consider two motions: 1) a motion to appoint the MHPAEA (B) Working Group; and 2) a motion to adopt the Task Force’s revised 2020 charges adding the charges for the Working Group.

Ms. Kruger made a motion, seconded by Director Lindley-Myers, to appoint the MHPAEA (B) Working Group. The motion passed unanimously.

Director Lindley-Myers made a motion, seconded by Ms. Kruger, to adopt the Task Force’s 2020 revised charges (Attachment One-A). The motion passed unanimously.

Having no further business, the Regulatory Framework (B) Task Force adjourned.

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The Regulatory Framework (B) Task Force met in Austin, TX, Dec. 7, 2019. The following Task Force members participated: Michael Conway, Chair (CO); Scott A. White, Vice Chair (VA); Lori K. Wing-Heier represented by Jacob Lauten (AK); Jim L. Ridling represented by Steve Ostlund (AL); Allen W. Kerr represented by Ryan James (AR); Stephen C. Taylor represented by Howard Liebers (DC); David Altmaier represented by James Dunn III (FL); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Weston Trexler (ID); Vicki Schmidt (KS); Nancy G. Atkins represented by John Melvin (KY); Gary Anderson represented by Kevin Beagan (MA); Eric A. Cioppa represented by Robert Wake and Marti Hooper (ME); Steve Kelley (MN); Chlora Lindley-Myers represented by Angela Nelson (MO); Mike Chaney represented by Bob Williams (MS); Mike Causey represented by Ted Hamby (NC); Jon Godfread (ND); Bruce R. Ramge represented by Martin Swanson and Laura Arp (NE); John Elias represented by Maureen Belanger (NH); John G. Franchini represented by Paige Duhamel (NM); Glen Mulready represented by Ron Kreiter (OK); Andrew Stolfi represented by TK Keen and Rick Blackwell (OR); Jessica Altman represented by Michael Humphreys and Katie Dzurec (PA); Raymond G. Farmer represented by Kendall Buchanan (SC); Larry Deiter represented by Jill Kruger (SD); Kent Sullivan represented by Doug Danzeiser (TX); Todd E. Kiser represented by Tanji Northrup (UT); Mike Kreidler represented by Molly Nollette (WA); Mark Afable represented by Nathan Houdek and Jennifer Stegall (WI); and James A. Dodrill represented by Erin K. Hunter (WV).

1. **Adopted its Oct. 2 and Summer National Meeting Minutes**

The Task Force met Oct. 2 and Aug. 3. During its Oct. 2 meeting, the Task Force adopted its 2020 proposed charges.

Mr. Trexler made a motion, seconded by Mr. Swanson, to adopt the Task Force’s Oct. 2 (Attachment One) and Aug. 3 (see NAIC Proceedings – Summer 2019, Regulatory Framework (B) Task Force) minutes. The motion passed unanimously.

2. **Adopted its Subgroup and Working Group Reports**

Mr. Keen made a motion, seconded by Commissioner Godfread, to adopt the following reports: the Accident and Sickness Insurance Minimum Standards (B) Subgroup, including its Nov. 25 (Attachment Two), Nov. 19 (Attachment Three), Nov. 4 (Attachment Four), Oct. 28 (Attachment Five), Oct. 7 (Attachment Six) and Sept. 16 (Attachment Seven) minutes; the ERISA (B) Working Group (Attachment Eight); the HMO Issues (B) Subgroup, including its Nov. 21 (Attachment Nine) and Sept. 16 (Attachment Ten) minutes; and the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup, including its Oct. 3 (Attachment Eleven), Aug. 29 (Attachment Twelve), Aug. 22 (Attachment Thirteen) and Aug. 15 (Attachment Fourteen) minutes. The motion passed unanimously.

3. **Heard an Update on the CHIR’s Work Related to the ACA**

Justin Giovannelli (Center on Health Insurance Reforms—CHIR, Georgetown University Health Policy Institute) provided an update on the CHIR’s work related to the federal Affordable Care Act (ACA) and other issues of interest to state insurance regulators. He highlighted a forthcoming CHIR report, supported by the Commonwealth Fund, concerning state oversight of health care sharing ministries. He explained how health care sharing ministries are treated under the ACA. Mr. Danzeiser said the National Council of Insurance Legislators (NCOIL) has a draft model on health care sharing ministries, the Health Care Sharing Ministry Registration Model Act.

Mr. Giovannelli discussed the CHIR’s work regarding multiple employer welfare arrangements (MEWAs). He said the CHIR recently published thousands of pages of the U.S. Department of Labor’s (DOL) investigative records concerning MEWAs that it obtained in response to a 2018 Freedom of Information Act (FOIA) request. He said the CHIR has posted the materials and a summary of those materials on the CHIR website at http://chirblog.org/the-mewa-files/. The CHIR anticipates providing additional analysis of these materials soon. He said the CHIR will continue to track and analyze state regulatory approaches to MEWAs and short-term, limited-duration plans (STLDPs) in the wake of recent federal rule changes with respect to these products.

Mr. Giovannelli also discussed the CHIR’s work related to state reforms affecting the individual market, including state actions involving the ACA’s section 1332 waiver program and state actions to improve the affordability of comprehensive coverage. He highlighted future CHIR research projects, including projects related to reinsurance, standardized health plans and state strategies concerning the Small Business Health Options Program (SHOP). He discussed the CHIR’s ongoing state technical
assistance regarding insurance regulatory matters with the support of the Robert Wood Johnson Foundation through its State Health and Value Strategies Program. He also highlighted the CHIR’s assistance, provided with the support by the Laura and John Arnold Foundation, to state and federal policymakers regarding regulatory approaches to balance billing.

Commissioner Conway asked about the CHIR’s timing for its reinsurance report. Mr. Giovannelli said the CHIR anticipates publishing a report in early Spring 2020. Commissioner Godfread asked Mr. Giovannelli if the CHIR has a position on provisions in the federal bills on balance billing that propose to use arbitration as the method for determining the out-of-network provider payment. Mr. Giovannelli said the CHIR has not taken any position on that issue, but its governing principle with respect to such legislation is that the consumer be held harmless.

4. **Heard a Presentation on the Implementation of a Consumer Purchasing Model in Summit County, CO**

Tamara Pogue-Drangstveit (Peak Health Alliance—Peak) provided an overview of the Peak community-based model for providing health insurance. She said this model provides existing community-based efforts with access to expertise and resources while maintaining local control. She said Peak is a non-profit purchasing cooperative governed by the local community. Peak also is a non-risk-bearing entity.

Ms. Pogue-Drangstveit described the traditional model used to provide health insurance benefits and Peak’s model. She highlighted the differences between the traditional model and Peak’s model. She described the process used to develop the Peak model, including the challenges encountered in developing such a model. She detailed how Peak set prices for certain services and procedures. She described Peak’s plan benefit designs, highlighting its plan benefit designs for mental health benefits.

Ms. Pogue-Drangstveit said Peak is working to duplicate its model in other Colorado counties. She described Peak’s core values, which are central to making the model work. Those core values include: 1) protecting local health care; 2) recognizing the unique challenges of rural health; 3) using data, not anecdotes; and 4) prioritizing collaboration.

Ms. Duhamel asked if Peak’s health benefit plans are sold on the ACA’s health insurance exchanges. Ms. Pogue-Drangstveit said Peak’s health benefit plans are sold both on and off the ACA’s health insurance exchanges. She also discussed the unintended consequences on the subsidized population because of Colorado’s reinsurance program and Peak’s successes. Mr. Humphreys asked how Peak’s model can be expanded to other states. Ms. Pogue-Drangstveit said Peak will only go into an area if it has a “sponsor” in order to have buy-in and credibility with the community and other stakeholders. Ms. Dzurec asked about Peak’s experience with rural hospitals and provider facilities and their lack of an ability to reduce prices due to their tight profit margins. Ms. Pogue-Drangstveit said that before approaching such facilities, Peak reviewed the data to determine if the pricing issue stems from over- or under-utilization or something else. Mr. Blackwell asked how the Peak model works with prescription drugs. Ms. Pogue-Drangstveit said Peak chose not to tackle prescription drug pricing during its first year. She said Peak plans to look at the data and prices for prescription drugs provided in facilities. She said Peak also plans to ask insurers how they can reduce prescription drug prices.

5. **Heard a Presentation on Health Care Cost Trends and Affordability**

Leanne Gassaway (America’s Health Insurance Plans—AHIP) discussed current health care cost trends and approaches to improving consumer affordability. She discussed three levers to lower premiums: 1) reducing the cost of health care; 2) offering premium savings; and 3) increasing participation to balance risk. She discussed AHIP’s suggested solutions to lower premiums for each lever.

To reduce health care costs, Ms. Gassaway suggested that curbing prescription drug costs is critical. She discussed the four themes that AHIP believes contribute to high prescription drug costs, including: 1) a broken and distorted pharmaceutical market; 2) excessive price increases on new and older drug therapies; and 3) high launch prices. She suggested that state solutions address this issue, including providing drug price transparency to consumers and providers.

Ms. Gassaway said another key to reducing health care costs is to reduce surprise medical bills. She said surprise medical bills raise costs. She also said private equity staffing firms are part of the reason for the increase in costs due to their exploitation of patients seeking care. She described how this is occurring. She also discussed state solutions to protect patients from surprise medical bills. She described how third-party payments are also driving up premiums. She highlighted California legislation addressing the issue.
Ms. Gassaway discussed how state reinsurance programs established under the ACA’s section 1332 waiver program can offer premium savings. She also discussed ways to increase participation to balance risk, including increasing consumer outreach and education about plan coverage options.

Commissioner Conway questioned whether market forces alone can address prescription drug costs. Ms. Gassaway said the states need to begin with providing prescription drug price transparently in order to obtain the necessary information to make more informed policy decisions. Commissioner Schmidt expressed concern that some of the information included in Ms. Gassaway’s presentation regarding prescription drug prices is out-of-date, and as such, it might not reflect the current situation. She also questioned why Ms. Gassaway did not mention pharmacy benefit managers (PBMs). Ms. Gassaway said AHIP views PBMs as partners in controlling prescription drug costs. She said pharmaceutical manufacturers set the prices, and AHIP does not view PBMs as driving up prescription drug costs.

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

Consider Adoption of its Subgroup and Working Group Reports
—Commissioner Michael Conway (CO)
Conference Call

ACCIDENT AND SICKNESS INSURANCE MINIMUM STANDARDS (B) SUBGROUP
December 16, 2019

Summary Report

The Accident and Sickness Insurance Minimum Standards (B) Subgroup of the Regulatory Framework (B) Task Force met via conference call Dec. 16, 2019. During this call, the Subgroup:

1. Continued its discussed of the comments received by the July 30 public comment deadline on Sections 1-5 of the Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act (#171).

2. Set a public comment period ending Feb. 7 to receive comments on Section on Section 6—Prohibited Policy Provisions and Section 7—Accident and Sickness Minimum Standards for Benefits of Model #171. The Subgroup had planned to begin meeting via conference call in February to complete its discussion of the comments received on Sections 1-5 and begin discussion of the comments received on Sections 6 and 7, but due to the COVID-19 health emergency and the loss of one of its co-chair, the Subgroup has not met since December 2019.
The Accident and Sickness Insurance Minimum Standards (B) Subgroup of the Regulatory Framework (B) Task Force met via conference call Dec. 16, 2019. The following Subgroup members participated: Melinda Domzalski-Hansen, Co-Chair (MN); Glen Mulready, Co-Chair, represented by Buddy Combs (OK); Debra Judy (CO); Chris Struk (FL); Gayle Woods (OR); Katie Dzurec (PA); Shari Miles (SC); Rachel Bowden (TX); Heidi Clausen and Shelley Wiseman (UT); Anna Van Fleet (VT); Andrea Philhower (WA); and Jennifer Stegall (WI).

1. Continued Discussion of the July 30 Comments on Sections 1–5 of Model #171

Ms. Domzalski-Hansen said the purpose of today’s conference call is for the Subgroup to continue its discussion section-by-section of the comments received by the July 30 public comment deadline on Sections 1–5 of the Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act (#171), beginning with Section 5L, the definition of “preexisting condition.” She reminded the Subgroup of its discussion of Section 5L during its Nov. 25 conference call.

Sarah Lueck (Center on Budget and Policy Priorities—CBPP) reiterated the purpose of the NAIC consumer representatives’ suggested revisions to the definition of “preexisting condition,” which is to provide an objective definition of the term for consumers because the prudent layperson standard is hard for consumers to understand when completing an application with respect to previous or current health conditions, and the suggested revised language is easier for consumers to understand. She reiterated the concern that consumers may not know they have a medical condition, but after completing an application, the consumer discovers his or her physician included the possibility of a consumer having a certain medical condition in the physician’s notes. Chris Petersen (Arbor Strategies LLC) said the Subgroup needed to review Section 7 of the Supplementary and Short-Term Health Insurance Minimum Standards Model Act (#170), which establishes standards related to coverage of preexisting conditions. He suggested that this provision affects the changes the Subgroup can make to the definition of “preexisting condition” in Section 5L.

The Subgroup discussed Mr. Petersen’s comments. After discussion, the Subgroup decided to defer discussion of the issue until it completes its review of Section 5 and seek the following information from state insurance regulators and interested parties on the following: 1) how the term “preexisting condition” is defined in state law; 2) examples of how the definition of “preexisting condition” is applied differently to various products within the scope of Model #171; and 3) how Section 7 of Model #170 applies or does not apply to the definition of “preexisting condition” in Section 5L.

The Subgroup discussed Section 5M, the definition of “residual disability.” Ms. Domzalski-Hansen said the Missouri Department of Insurance (DOI) submitted comments on Section 5M suggesting that certain language in the definition should be moved to a substantive provision in Model #171. After discussion, the Subgroup agreed to move the provision highlighted by the Missouri DOI to the appropriate provision or provisions in Section 7—Accident and Sickness Minimum Standards for Benefits.

The Subgroup next discussed Section 5N, the definition of “sickness.” The Subgroup next discussed Section 5N suggesting clarifying changes to the language and moving some of the language to a substantive provision in Model #171. Ms. Lueck said the NAIC consumer representatives also submitted comments on Section 5N suggesting the addition of a drafting note related to the application of any probationary period to a preexisting condition exclusion period. The Subgroup discussed the meaning of probationary period versus waiting period. Ms. Lueck asked about the impact of the Subgroup moving provisions in the various definitions in Section 5 to substantive provisions in Model #171 and whether, after moving the language, if the language would still be considered a minimum standard. The Subgroup discussed and agreed that such language would still be considered a minimum standard.

The Subgroup discussed whether to add the NAIC consumer representatives’ suggested drafting note to Section 5N. The Subgroup decided to add the drafting note. J.P. Wieske (Horizon Government Affairs—HGA) suggested that the proposed drafting note may not be needed if the Subgroup reworks the language in Section 5N to clarify the difference between a probationary period and a waiting period. Ms. Domzalski-Hansen suggested that the Subgroup revisit the language in Section
5N when it discusses Section 6—Prohibited Policy Provisions. Mr. Petersen volunteered to poll his membership about the appropriate terms, “probationary period” versus “waiting period,” currently being used by industry.

Mollie Zito (UnitedHealthcare) said UnitedHealthcare is withdrawing its comments on Section 5N.

Ms. Domzalski-Hansen said that in order to keep the Subgroup’s discussion moving forward following completion of its review of Section 5, she suggests the Subgroup set a public comment period ending Feb. 7, 2020, to receive comments on Section 6—Prohibited Policy Provisions and Section 7—Accident and Sickness Minimum Standards for Benefits. There was no objection to her suggestion.

Ms. Domzalski-Hansen reiterated the Subgroup’s request for additional information on the issues it discussed related to Section 5L, the definition of “preexisting condition.” She said that following the Subgroup conference call, she would work with NAIC staff to compose an email requesting the information for distribution to Subgroup members and interested parties.

Having no further business, the Accident and Sickness Insurance Minimum Standards (B) Subgroup adjourned.

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Summary Report

The HMO Issues (B) Subgroup of the Regulatory Framework (B) Task Force met July 13 and June 11, 2020. During these meetings, the Subgroup:

1. Discussed the comments received by the public comment period ending March 18 on proposed revisions to the Health Maintenance Organization Model Act (#430) to address inconsistencies and redundancies in the model with the provisions in the Life and Health Insurance Guaranty Association Model Act (#520), which added health maintenance organizations as members of the guaranty association.

2. Adopted the proposed revisions to Model #430.
The HMO Issues (B) Subgroup of the Regulatory Framework (B) Task Force met via conference call July 13, 2020. The following Subgroup members participated: Don Beatty, Chair (VA); Keith Warburton (CO); Toma Wilkerson (FL); Ryan Gillespie (IL); DJ Wasson (KY); Robert Wake (ME); Chlora Lindley-Myers (MO); Martin Swanson (NE); Nathan Houdek (WI); and Joylynn Fix (WV).

1. **Adopted its June 11 Minutes**

The Subgroup met June 11 to review and discuss the comments received by the March 18 public comment deadline on the proposed revisions to the *Health Maintenance Organization Model Act* (#430).

Ms. Wilkerson made a motion, seconded by Ms. Fix, to adopt the Subgroup’s June 11 minutes (Attachment ?-A). The motion passed unanimously.

2. **Adopted a Motion to Forward Draft Model #430 Revisions to the Regulatory Framework (B) Task Force**

Mr. Beatty said the purpose of the call is for the Subgroup to discuss the draft of proposed revisions to Model #430 which reflect the Subgroup’s discussion during its June 11 conference call and consider forwarding the draft to the Regulatory Framework (B) Task Force for its consideration. He requested comments. There were no comments.

Mr. Wake made a motion, seconded by Ms. Wilkerson, to forward the draft of proposed revisions to Model #430 (Attachment ?-B) to the Regulatory Framework (B) Task Force for its consideration. The motion passed unanimously.

Having no further business, the HMO Issues (B) Subgroup adjourned.

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The HMO Issues (B) Subgroup of the Regulatory Framework (B) Task Force met via conference call June 11, 2020. The following Subgroup members participated: Don Beatty, Chair (VA); Keith Warburton (CO); Toma Wilkerson (FL); Ryan Gillespie (IL); DJ Wasson (KY); Robert Wake (ME); Carrie Couch (MO); Laura Arp (NE); Nathan Houdek (WI); and Joylynn Fix (WV).

1. Discussed March 18 Comments on Proposed Revisions to Model #430

Mr. Beatty said the purpose of the call is for the Subgroup to discuss the comments received on the proposed revisions to the Health Maintenance Organization Model Act (#430) for consistency with the revised Life and Health Insurance Guaranty Association Model Act (#520). He said the Subgroup received comments from the NAIC consumer representatives, the Blue Cross and Blue Shield Association (BCBSA), and the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA).

Anna Howard (American Cancer Society Cancer Action Network—ACS CAN) said the NAIC consumer representatives strongly urge the Subgroup to retain Section 14—Continuation of Benefits and Section 21—Open Enrollment and Replacement Coverage in the Event of Insolvency because of the explicit consumer protections these sections provide. She said the NAIC consumer representatives have provided language for a potential drafting note for Section 14 suggesting that those states that have adopted the revised Model #520 consider alternative continuation of benefits language for Section 14 to ensure that enrollees’ claims are paid during the transition period and/or while waiting for the commencement of alternative coverage.

Mr. Wake agreed that retaining Section 14 is important for those states that have not adopted the revised Model #520, which added health maintenance organizations (HMOs) as members of the guaranty association. He said, however, that for those states that have adopted the revised Model #520, it is unnecessary to retain Section 14 because continuation of benefits is covered through the guaranty association procedures. He also noted that the proposed drafting note for Section 2—Purpose and Intent alerts those states that have not adopted the revised Model #520 to retain Section 14. Mr. Wake said Section 21 is obsolete because of the guaranteed issue provision and other provisions in the federal Affordable Care Act (ACA). He said this is true regardless of whether a state has adopted the revised Model #520.

Mr. Beatty asked Joni Forsythe (NOLHGA) if the Subgroup needed to address a gap in coverage and retain Section 14. Ms. Forsythe said NOLHGA has not identified any gap in coverage that would require retaining Section 14. Ms. Howard said the NAIC consumer representatives are apprehensive about removing Section 14 just in case there is an issue. Chris Petersen (Arbor Strategies LLC) expressed support for the NAIC consumer representatives’ concern, noting comments he had previously submitted to the Subgroup on this issue. He said, however, that he could support the Subgroup’s decision to remove Section 14 if that is what it decides. Mr. Beatty said the Subgroup would proceed with deleting Section 14, but he urged anyone who believes that there will be a gap in coverage to alert the Subgroup.

Ms. Forsyth said NOLHGA takes no position on the proposed revisions to Model #430 as whole, but it has a few technical comments for the Subgroup’s consideration. She said NOLHGA’s first technical comment concerns the use of the word “conformity” in both option 1 and option 2 of the proposed drafting note to Section 2. She said NOLHGA believes the term “conformity” suggests a higher standard of assimilation with Model #520 than what the Subgroup intends with respect to the Model #430 revisions. To address this concern, she said NOLHGA suggests using the term “reconcile” instead. Ms. Forsyth also said NOLHGA does not understand why neither option 1 nor option 2 of the drafting note explains why Section 21 is being deleted. She said NOLHGA also suggests the Subgroup consider including the full text of the repealed provisions as an appendix to Model #430 in order to preserve the text.

Ms. Forsyth said that if the Subgroup decides to proceed with option 2, NOLHGA suggests clarifying language in option 2 concerning the purpose of the repealed Model #430 provisions by replacing the language “addressed issues arising from the lack of guaranty association protection” with “provided consumer protection for HMO enrollees in the event of an HMO insolvency, in the absence of guaranty association protection.” She said NOLHGA’s final technical comment concerns an additional section in Model #430 the Subgroup has not discussed, but which could conflict with the revised Model #520. She said Section 31—Statutory Construction and Relationship to Other Laws (formerly section 34) provides that, except as provided
in Model Act #430, provisions of state insurance laws do not apply to HMOs. She said Section 28—Rehabilitation, Liquidation or Conservation of Health Maintenance Organizations (formerly section 31) provides that HMOs are subject to state receivership laws, but it does not include any reference to state guaranty association laws. Ms. Forsyth said this potential conflict could be resolved by adding “or other applicable laws” in the opening sentence of Section 31.

John Troy (BCBSA) said the BCBSA supports the Subgroup’s proposed revisions. He said the BCBSA supports including option 2 in the proposed revisions instead of option 1 because it is briefer and more to the point and, as such, more likely to be reasonably well understood.

The Subgroup discussed NOLHGA’s comments. Mr. Wake said he could support NOLHGA’s suggested revision to Section 31 with one change. He suggested the Subgroup add the language “or in other laws expressly referring to health maintenance organizations.” He said he suggests this language because it specifies the type of applicable law. Ms. Arp expressed support for Mr. Wake’s suggested revision because of its similarity to Nebraska law. Mr. Wake also expressed support for NOLHGA’s other suggested technical revisions. Ms. Wilkerson expressed similar support, but she asked if any other NAIC models included an appendix as NOLHGA suggests. Jolie H. Matthews (NAIC) said she has not seen similar appendices in other NAIC models, but that this would not preclude the Subgroup from adding such an appendix as part of the Model #430 revisions.

After additional discussion, the Subgroup directed NAIC staff to prepare another draft of proposed revisions to Model #430 that would include the following: 1) option 2 of the proposed drafting note for Section 2 with NOLHGA’s suggested revisions; 2) NOLHGA’s suggested revision to Section 31, with Mr. Wake’s additional suggested revision; and 3) NOLHGA’s suggestion to add an appendix with the repealed provisions. Mr. Beatty said the Subgroup would hold another conference call sometime in July to consider adopting the proposed revisions and forwarding the revised Model #430 to the Regulatory Framework (B) Task Force for its consideration.

Having no further business, the HMO Issues (B) Subgroup adjourned.
Meeting Summary Report

The MHPAEA (B) Working Group of the Regulatory Framework (B) Task Force met July 28, 2020. During this meeting, the Working Group:

1. Adopted its June 24 minutes, which included the following action:
   a. Adopted its June 5 minutes, which included the following action:
      i. Adopted its March 19 minutes, which included the following action: 1) adopted its March 9 minutes; 2) discussed its plan to operate similar to the ERISA (B) Working Group; and 3) discussed its anticipated work for 2020 consistent with its 2020 charges.
      ii. Discussed a draft quantitative treatment limitation/financial requirement (QTL/FR) template.
   b. Discussed the comments received on the draft QTL/FR template received by the June 18 public comment deadline.

2. Heard a presentation on activities and work being done to assist self-funded group health plans and private employers to comply with mental health parity requirements under the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addition Equity Act of 2008 (MHPAEA).

3. Heard a presentation from the American Psychiatric Association (APA) on state activities and legislation related to MHPAEA parity data reporting requirements.

4. Discussed current parity compliance resources and tools available to the states to determine plan compliance with the MHPAEA parity requirements and potential resources and tools the Working Group developed to supplement, but not supplant, these existing tools and resources.

5. Discussed next steps in developing supplemental MHPAEA parity compliance resources and tools for the states related to non-quantitative treatment limitations (NQTLs).
The Pharmacy Benefit Manager Regulatory Issues (B) Subgroup of the Regulatory Framework (B) Task Force met via conference call July 16, 2020. During this call, the Subgroup:

1. Discussed the ad hoc drafting group’s draft pharmacy benefit manager (PBM) model act.

2. Exposed the PBM draft for a public comment period ending Sept. 1. The Subgroup plans to meet via conference call to begin discussion of the comments received sometime in September after the public comment period ends.
Draft: 7/23/20

Pharmacy Benefit Manager Regulatory Issues (B) Subgroup
Conference Call
July 16, 2020

The Pharmacy Benefit Manager Regulatory Issues (B) Subgroup of the Regulatory Framework (B) Task Force met via conference call July 16, 2020. The following Subgroup members participated: TK Keen, Chair (OR); Martin Swanson and Laura Arp, Vice Chairs (NE); Sarah Bailey (AK); Anthony L. Williams (AL); Marjorie Farmer (AR); Bruce Hinze (CA); Howard Liebers (DC); Andria Seip (IA); Vicki Schmidt (KS); Daniel McIlwain (KY); Jeffrey Zewe (LA); Mary Kwei (MD); Chad Arnold (MI); Candace Gergen (MN); Amy Hoyt (MO); Derek Oestreicher (MT); Gale Simon (NJ); Renee Blechner and Paige Duhamel (NM); Michael Humphreys (PA); Rachel Jade-Rice (TN); James Young (VA); Jennifer Kreitler (WA); Nathan Houdek (WI); Ellen Potter (WV); and Denise Burke (WY).

1. Discussed and Exposed a Draft PBM Model

Mr. Keen said as directed by the Subgroup late last year, the ad hoc drafting group completed its work in developing a draft of a proposed new [State] Pharmacy Benefit Manager Licensure and Regulation Model Act (Attachment ?-A). He reminded the Subgroup that it had directed the ad hoc drafting group to develop a draft pharmacy benefit manager (PBM) model addressing licensing and gag clauses. He explained that during its discussions, the ad hoc drafting group discussed many issues beyond the scope of its charge from the Subgroup, which in many respects is reflected in the draft.

Mr. Keen said the ad hoc drafting group used the National Conference of Insurance Legislators’ (NCOIL’s) Pharmacy Benefits Manager Licensure and Regulation Model Act as a base for the draft. He provided a high-level overview of the draft’s provisions. Ms. Seip asked if those states that have adopted provisions similar to the proposed Section 6—Gag Clauses Prohibited have had any issues with it and if they could share their experiences with its implementation. Ms. Farmer said Arkansas has had a similar provision in its law for years, and it has not experienced any implementation issues. Ms. Duhamel said New Mexico’s experience with its law is the same as Arkansas’ experience.

Mr. Keen said the ad hoc drafting group had a lot of discussion concerning Section 8—Regulations, particularly Section 8B, which includes a list of potential provisions the states could include in any regulations adopted to implement the proposed model’s provisions. Ms. Arp explained that Section 8B was crafted as a compromise between those states that are at the forefront of pharmacy benefit manager (PBM) regulation, as reflected in the discussions during the Subgroup’s information-gathering sessions, and those states that are just beginning to consider PBM regulation. Mr. Humphreys said he has concerns with the inclusion of Section 8B in an NAIC model, noting that his legislature most likely would not support such a provision. He suggested that the Subgroup consider developing a white paper on the topics outlined in Section 8B and a standalone PBM licensing model.

Mr. Oestreicher expressed support for Section 8B because he does not believe PBM licensure and gag clause provisions alone would lower prescription drugs costs for consumers. He said Section 8B gives the states the option to include provisions that would lower costs. He said the states that choose to add these provisions can find language in other state laws, such as Maine’s law and the National Academy for State Health Policy’s (NASHP’s) model legislation. Ms. Seip suggested that it would be useful for the Subgroup to know what language the states have on these topics and their experiences. Mr. Hinze said the ad hoc drafting group considers Section 8B to be a starting point, not the end. Mr. Houdek asked about the Subgroup’s next steps are if the Subgroup decides to move forward with the ad hoc drafting group’s draft. Mr. Keen said assuming the Subgroup decides to move forward with the ad hoc drafting group’s draft, the Subgroup’s next steps would be to expose the draft for public comment and then discuss and make revisions to the draft based on the comments received.

Mr. Keen requested comments from interested parties. Chris Petersen (Arbor Strategies LLC), representing the Pharmaceutical Care Management Association (PCMA), said the PCMA submitted a comment letter suggesting that Section 4—Applicability and Section 6 are in conflict. He also suggested that the Subgroup revise Section 6 to mirror the federal gag clause language. He also said the current draft would not meet the NAIC requirement for an NAIC model to be adopted in a majority of the states because of the proposed language in Section 8B. Amy Killelea (National Alliance of State and Territorial AIDS Directors—NASTAD) said PBM practices have a direct impact on consumer access and affordability; as such, the NAIC consumer representatives would be supportive of more substantive language in Section 8B. Kris Hathaway (America’s Health Insurance Plans—AHIP) said AHIP would be supportive of a PBM licensure model. However, she suggested that the Subgroup keep in mind that PBMs are partners in keeping prescription drug costs low. She said the proposed provisions in Section 8B...
would handcuff plans in lowering prescription drug costs. John Covello (Independent Pharmacy Cooperative) expressed concern with provisions in the draft, such as potential duplicative provisions in Section 3—Definitions and Section 4. Carl Schmid (HIV + Hepatitis Policy Institute) expressed support for Ms. Turner’s comments. He also expressed concerns that Section 5—Licensing Requirement does not include any enforcement or penalty provisions.

Mr. Hinze made a motion, seconded by Mr. Oestreicher, to accept the ad hoc drafting group’s draft as a starting point in the Subgroup work to develop a new NAIC model regulating PBMs. The motion passed unanimously.

Mr. Hinze made a motion, seconded by Ms. Farmer, to expose the draft for a 45-day public comment period. The motion passed unanimously.

Having no further business, the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup adjourned.
Agenda Item #3

Hear an Update on the Center on Health Insurance Reforms’ (CHIR’s) Work Related to the Federal Affordable Care Act (ACA)—Justin Giovannelli (CHIR, Georgetown University Health Policy Institute)
Agenda Item #4

Hear a Panel Presentation on Health Care Sharing Ministries—Joel Noble (Samaritan Ministries International) and Justin Giovannelli (CHIR, Georgetown University Health Policy Institute)
Agenda Item #5

Hear a Discussion on
Premium Holidays, Early Medical Loss Ratio (MLR) Rebate Payments and Adjustments to Cost-Sharing Benefits as a Result of Fewer Claim Filings in 2020 Due to COVID-19
—Jason Levitis (Levitis Strategies, LLC) and Randy Pate (Center for Consumer Information and Insurance Oversight—CCIIO)
Agenda Item #6

Discuss Any Other Matters Brought Before the Task Force

—Commissioner Michael Conway (CO)