

SENIOR ISSUES (B) TASK FORCE

Senior Issues (B) Task Force Aug. 3, 2020, Minutes

Senior Issues (B) Task Force March 3, 2020, Minutes (Attachment One)

Draft Pending Adoption

Draft: 8/12/20

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

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

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

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

2. Heard a Federal Legislative Update

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

3. Discussed Other Matters

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

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

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

Bonnie Burns (California Health Advocates—CHA) highlighted fraud and COVID-19 among seniors, and she encouraged communication among all parties about any and all fraud circulating. She also said there is the problem with people who are getting home care under long-term care insurance (LTCI) policies. She said these people have family living in their homes who are able and available caregivers, but these family caregivers are excluded under almost all of the LTCI policies. She said the

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pandemic has increased the concern about an outside caregiver, and many are now going without care. She encouraged state insurance regulators and companies to look at the flexibility of having a family caregiver included on a month to month basis during this national emergency.

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

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

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

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

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

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

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

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

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

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Senior Issues (B) Task Force
Conference Call
March 3, 2020

The Senior Issues (B) Task Force met via conference call March 3, 2020. The following Task Force members participated: Marlene Caride, Chair (NJ); Lori K. Wing-Heier, Vice Chair (AK); Jim L. Ridling represented by Steve Ostlund (AL); Allen W. Kerr represented by William Lacy (AR); Ricardo Lara represented by Ryan Delatorre (CA); Michael Conway represented by Peg Brown (CO); Karima M. Woods represented by Howard Liebers (DC); Trinidad Navarro represented by Fleur McKendell (DE); David Altmaier represented by Chris Struk (FL); John F. King represented by Teresa Winer (GA); Colin M. Hayashida represented by Martha Im (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Kathy McGill (ID); Stephen W. Robertson represented by Rebecca Vaughan (IN); Vicki Schmidt (KS); Sharon P. Clark represented by Stephanie McGaughey-Bowker (KY); James J. Donelon represented by Alecia Johnson (LA); Gary Anderson represented by Rebecca Butler (MA); Al Redmer Jr. represented by Adam Zimmerman (MD); Anita G. Fox represented by Renee Campbell (MI); Steve Kelley represented by Fred Andersen (MN); Chlora Lindley-Myers (MO); Mike Causey represented by David Yetter (NC); Jon Godfread represented by Yuri Venjohn (ND); Bruce R. Ramge represented by Martin Swanson (NE); Chris Nicolopoulos represented by Karen McAllister (NH); Barbara D. Richardson represented by Jack Childress (NV); Jillian Froment represented by Laura Miller (OH); Glen Mulready represented by Ron Kreiter (OK); Andrew R. Stolfi represented by Gayle L. Woods (OR); Jessica K. Altman (PA); Kent Sullivan represented by Doug Danzeiser (TX); Todd E. Kiser represented by Tomasz Serbinowski and Jaakob Sundberg (UT); Scott A. White represented by Craig Chupp (VA); Mike Kreidler represented by Michael Bryant (WA); Mark Afile represented by Jennifer Stegall (WI); and James A. Dodrill represented by Dena Wildman (WV). Also participating were: Vincent Gosz (AZ); Eric Anderson (IL); Bob Williams (MS); Troy Smith (MT); Martin Wojcik (NY); and Andrew Dvorine (SC).

1. Discussed the Task Force's 2020 Agenda

Commissioner Caride said the Task Force should consider establishing a working group with the purpose of examining whether the *Long-Term Care Insurance Model Act* (#640) and *Long-Term Care Insurance Model Regulation* (#641) should be updated. She asked David Torian (NAIC) to explain this in greater detail.

Mr. Torian said one of the goals of the NAIC is for its committees to periodically review and update its models, as necessary. He said the Task Force's own charge also states that purpose. He said the model was last reviewed and updated over a decade ago, except for the consumer disclosure sections, which were updated in 2016. He said the Working Group, to be tentatively named the LTCI Model Update (B) Working Group, would be charged with reviewing whether Model #640 and Model #641 should be updated. He said the Working Group would then report its findings to the Task Force and, if updates are necessary, the Working Group would then be charged with making those updates.

Mr. Torian also said that should the Long-Term Care Insurance (EX) Task Force adopt any provisions or suggestions that require a change to Model #640 and Model #641, the Working Group would be operational and prepared to make such changes.

Commissioner Caride asked if anyone had any questions or comments. Mr. Swanson said he supports the establishment of this Working Group. Bonnie Burns (California Health Advocates—CHA) asked about the format of the Working Group. Commissioner Caride asked Mr. Torian to respond, and he said that the Working Group would review the model, section-by-section if it so chooses, to determine what may need to be updated.

Mr. Andersen asked if one of the reasons for the creation of the Working Group was to examine and address innovation in long-term care (LTC). Commissioner Caride asked Mr. Torian to respond, and he said that was not the intent behind the Working Group, but rather that the models had not been updated in over a decade, other than the consumer disclosure portions, and the main purpose was to do what the Task Force should do, periodically review its models. Director Wing-Heier said that she, Commissioner Caride and Mr. Torian had discussed that a model review would be a good item for the Task Force to embark on in 2020.

Ms. Burns asked who the members would be and whether the interested parties would be able to participate. Mr. Torian said that state insurance regulators should email him with their interest to become members of the new Working Group and to limit the number of members to a manageable number of 12; members would be selected on a "first email-first selected" basis. He

said all interested parties would be part of the new Working Group and receive all notifications of open conference calls and other notifications.

2. Established the LTCI Model Update (B) Working Group

Director Wing-Heier made a motion, seconded by Mr. Swanson, to establish the LTCI Model Update (B) Working Group with the charge to examine whether Model #640 and Model #641 should be updated. The motion passed.

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

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