REGULATORY FRAMEWORK (B) TASK FORCE

Regulatory Framework (B) Task Force March 16, 2024, Minutes

- Accident and Sickness Insurance Minimum Standards (B) Subgroup Feb. 26, 2024, Minutes (Attachment One)
- Accident and Sickness Insurance Minimum Standards (B) Subgroup Feb. 12, 2024, Minutes (Attachment Two)
- Accident and Sickness Insurance Minimum Standards (B) Subgroup Jan. 29, 2024, Minutes (Attachment Three)
- Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group Dec. 2, 2023, Minutes (Attachment Four)
- Regulatory Framework (B) Task Force Draft 2024 Revised Proposed Charges (Attachment Five)

Draft Pending Adoption

Draft: 3/26/24

Regulatory Framework (B) Task Force
Phoenix, Arizona
March 16, 2024

The Regulatory Framework (B) Task Force met in Phoenix, AZ, March 16, 2024. The following Task Force members participated: Glen Mulready, Chair, and Andy Schallhorn (OK); Dana Popish Severinghaus represented by Erica Weyhenmeyer, Vice Chair (IL); Lori K. Wing-Heier represented by Sarah Bailey (AK); Mark Fowler represented by Sanjeev Chaudhuri (AL); Ricardo Lara represented by Tyler McKinney (CA); Michael Conway represented by Debra Judy (CO); Andrew N. Mais represented by Jared Kosky (CT); Karima M. Woods represented by Stephen Flick (DC); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Shannon Hohl (ID); Amy L. Beard represented by Alex Peck and Meghann Leaird (IN); Vicki Schmidt represented by Craig VanAalst (KS); Sharon P. Clark represented by Shaun Orme (KY); Gary D. Anderson represented by Kevin Beagan (MA); Robert L. Carey represented by Marti Hooper (ME); Chlora Lyndley-Myers represented by Jo LeDuc, Amy Hoyt, and Carrie Couch (MO); Mike Causey represented by Robert Croom (NC); Jon Godfread represented by Chrystal Bartuska and Karri Morris (ND); Eric Dunning represented by Martin Swanson, Maggie Reinert, and Michael Muldoon (NE); D.J. Bettencourt represented by Michelle Heaton (NH); Scott Kipper represented by Nick Stosic and Jonathan Wycoff (NV); Judith L. French represented by Kyla Dembowski (OH); Andrew R. Stolfi represented by TK Keen (OR); Michael Humphreys represented by Shannen Logue (PA); Larry D. Deiter represented by Jill Kruger (SD); Cassie Brown represented by Rachel Bowden (TX); Jon Pike represented by Tanji J. Northrup, Ryan Jubber, Shelley Wiseman, and Heidi Clausen (UT); Scott A. White represented by Julie Blauvelt and Jackie Myers (VA); Mike Kreidler represented by Ned Gaines and Jane Beyer (WA); Nathan Houdek represented by Jennifer Stegall (WI); and Allan L. McVey represented by Joylynn Fix (WV). Also participating was: Patrick Smock (RI).

1. Adopted its 2023 Fall National Meeting Minutes

Weyhenmeyer made a motion, seconded by Keen, to adopt the Task Force's Dec. 1, 2023, minutes (*see NAIC Proceedings – Fall 2023, Regulatory Framework (B) Task Force*). The motion passed unanimously.

2. Adopted its Subgroup and Working Group Reports

Swanson made a motion, seconded by Kruger, to adopt the following reports: 1) the Accident and Sickness Insurance Minimum Standards (B) Subgroup, including its Feb. 26 (Attachment One), Feb. 12 (Attachment Two), and Jan. 29 (Attachment Three) minutes; 2) the Employee Retirement Income Security Act (ERISA) (B) Working Group; 3) the Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group, including its Dec. 2, 2023 (Attachment Four) minutes; and 4) the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup. The motion passed unanimously.

3. Received an Update on the Accident and Sickness Insurance Minimum Standards (B) Subgroup's Work

Schallhorn updated the Task Force on the work of the Accident and Sickness Insurance Minimum Standards (B) Subgroup to revise the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act* (#171). He said the Task Force established the Accident and Sickness Insurance Minimum Standards (B) Subgroup in 2016 to revise the *Accident and Sickness Insurance Minimum Standards Model Act (*#170*),* and its companion model, Model #171, to address the models' provisions for certain types of health insurance plans that are no longer permitted under the federal Affordable Care Act (ACA).

Schallhorn said the Accident and Sickness Insurance Minimum Standards (B) Subgroup completed the revisions to Model #170 in late 2018, renaming it the *Supplementary and Short-Term Health Insurance Minimum Standards*

Model Act to reflect its revised provisions. The Executive (EX) Committee and Plenary adopted the revised model in February 2019. Following the adoption of the revised Model #170, the Subgroup turned its attention to revising Model #171 for consistency with the ACA and the revised Model #170.

Schallhorn said the Subgroup met throughout 2019, but because of the COVID-19 pandemic and other resource issues, the Subgroup did not meet in 2020. He said the Subgroup resumed meeting in June 2021 and has been meeting on a regular basis since to discuss the comments received on Model #171. In fall 2023, the Subgroup completed its review of the initial comments received on Model #170 and released a draft of proposed revisions to Model #171 for a public comment period, which ended on Dec. 1, 2023.

Schallhorn said that in developing the proposed revisions, the Subgroup extensively discussed potential provisions to the model on short-term, limited-duration (STLD) plans. He explained that the Subgroup added STLD plans to Model #170 because, at the time, there was no other vehicle to include such plans, and the Subgroup did not want to develop a new NAIC model solely for them, and because they were added to Model #170, Model #171 needed to include provisions establishing minimum standards for benefits for them. Schallhorn said that, in response to its request for comments, the Subgroup received comments from several stakeholders. He said the Subgroup has been meeting since January to discuss the comments received. Schallhorn said the Subgroup intends to complete its review of the comments within the next few months. Then it will forward the revised model to the Task Force for its consideration.

4. Discussed Embedded Insurance Code Provisions for HSAs

Jeffrey Klein (American Bankers Association [ABA] Health Savings Account [HSA] Council) discussed embedded insurance code provisions protecting HSAs. He highlighted 2023 state legislative activity using embedded insurance code provisions to carve out or exempt HSAs from certain benefit mandate/limited cost-sharing bills and copayment accumulator bills to protect the ability of HSA account holders to continue to use their HSA. Klein also discussed the ABA HSA Council's 2024 state advocacy initiatives and priorities, which include working with states to expand the number of states that have enacted embedded insurance code provisions. Currently, eight states have such provisions.

Klein said the ABA HSA Council has one ask of the Task Force, which is for the Task Force to work with state departments of insurance (DOIs) and other interested parties to adopt embedded insurance code provisions to protect HSAs. Klein said adopting such legislation prevents unintended consequences and protects HSAs of well-intended state benefit mandate and cost-sharing legislation and proposals advocated by patient advocacy groups and other interested parties. Klein also noted that such provisions provide "legislative economy" considering the hundreds of individual state benefit mandate bills considered each year in state legislatures.

5. Discussed Draft 2024 Revised Proposed Charges for the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup

Jolie H. Matthews (NAIC) said that prior to the Task Force's meeting, NAIC staff distributed draft 2024 revised proposed charges (Attachment Five) for the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup for initial Task Force discussion during this meeting. She said the charges reflect discussions between the Task Force chair, Task Force vice chair, and NAIC staff. She explained that the charges envision the Subgroup transitioning to a working group because it would have continuing work that would not be finished at year-end.

Matthews explained that the charges are based, in part, on the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup's recommendations, which were initially included in its white paper *A Guide to Understanding Pharmacy Benefit Manager and Associated Stakeholder Regulation* and charges from other NAIC groups, such as the Health Innovations (B) Working Group and the Mental Health Parity and Addiction Equity (MHPAEA) (B) Working Group.

She highlighted a few of the charges, including a charge suggesting the Subgroup's successor working group consider any necessary updates to the *Health Carrier Prescription Drug Benefit Management Model Act* (#22).

The Task Force discussed the charges and next steps. Some Task Force members suggested that it would be premature for the Subgroup's successor group to consider potential review and any necessary updates to Model #22 given the evolving nature of the issues related to pharmacy benefit managers (PBMs) and the prescription drug ecosystem. In addition, some Task Force members suggested that because Model #22 has not been adopted in its entirety by any state, it would not be appropriate to consider updating it.

Carl Schmid (HIV+Hepatitis Policy Institute), speaking on behalf of the NAIC consumer representatives, said the NAIC consumer representatives submitted a comment letter to the Task Force expressing strong support for the draft revised 2024 proposed charges. Chris Petersen (Arbor Strategies LLC) speaking on behalf of the Pharmaceutical Care Management Association (PCMA), said the PCMA does not believe it is appropriate to include a charge suggesting the successor working group review and consider updates to Model #22 because it would be premature, and, as already discussed, no state has adopted it in its entirety. He noted that, as discussed in its comment letter to the Task Force, the PCMA supports having the Subgroup's successor working group focus on all aspects of the pharmaceutical supply chain.

After additional discussion, the Task Force set a 30-day public comment period ending April 19 to receive comments on the draft 2024 revised proposed charges. Commissioner Mulready announced that for 2024, Fix has agreed to chair the Subgroup's successor working group, and Ashley Scott (OK) would continue as vice chair.

6. Heard Information on World Hypertension Day

J.P. Wieske (Horizon Government Affairs), representing Jazz Pharmaceuticals, provided information to the Task Force on World Hypertension Day, which is May 17. He explained that Jazz Pharmaceuticals focuses on innovation to transform the lives of patients and their families. Jazz Pharmaceuticals is dedicated to developing life-changing medicines for people with serious diseases—often with limited or no therapeutic options—so they can live their lives more fully.

Wieske said that Jazz Pharmaceuticals is seeing an increasing number of high-sodium medications and as such, it wanted to bring awareness of hypertension—what it is, who is at risk, how it can be prevented and managed, and which medications can affect blood pressure levels—to state DOIs and provide information on World Hypertension Day and a sample press release.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/B CMTE/RFTF/National Meetings/2023 Fall Meeting/RFTF 3-16-24 MtgMin.docx

Draft: 3/7/24

Accident and Sickness Insurance Minimum Standards (B) Subgroup
Virtual Meeting
February 26, 2024

The Accident and Sickness Insurance Minimum Standards (B) Subgroup of the Regulatory Framework (B) Task Force met Feb. 26, 2024. The following Subgroup members participated: Andy Schallhorn, Co-Chair (OK); Rachel Bowden, Co-Chair (TX); Howard Liebers (DC); Christina Jackson (FL); Frank Opelka (LA); Sherry Worth (ME); Camille Anderson-Weddle (MO); Maggie Reinert (NE); Shari Miles (SC); Heidi Clausen and Shelley Wiseman (UT); Anna Van Fleet, Mary Block, and Jamie Gile (VT); and Ned Gaines (WA).

1. Continued Discussion of the Dec. 1, 2023, Comments Received on Draft Revisions to Model #171

The Subgroup continued its discussion of the Dec. 1, 2023, comments submitted on the Oct. 12, 2023, draft of proposed revisions to the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act* (#171) beginning with the definition of "preexisting condition" in Section 6J. Jolie Matthews (NAIC) reiterated that during its previous discussions of this definition, the Subgroup discussed, but did not make a definitive decision on whether to develop a separate definition of this term for short-term, limited-duration (STLD) plans. Instead, the Subgroup requested that NAIC staff make a note of the issue and have the Subgroup return to it after it completes its review of the entire model. Matthews said that the Oct. 12, 2023, comments include comments from stakeholders on whether to maintain the current definition and apply it to all products regulated under Model #171, including STLD plans or to develop a separate definition for STLD plans. The Subgroup reviewed the comments. After discussion, the Subgroup decided to maintain the current definition and apply it to all products regulated under Model #171, including STLD plans.

The Subgroup next discussed the Schiffbauer Law Office's suggestion to add the word "illness" to the definition of "sickness" in Section 6L. William Schiffbauer (Schiffbauer Law Office) said he suggests adding the word "illness" for consistency with other language in the draft revisions. After discussion, the Subgroup accepted his suggested revision.

The Subgroup next discussed the NAIC consumer representatives' suggestion to add "including goods and services" to Section 6M(1), the definition of "total disability." The Subgroup did not accept the suggested revision for the same reasons it did not accept an identical suggested revision to the definition of "partial disability" in Section 6H(2). The Subgroup discussed the NAIC consumer representatives' suggestion for Section 6M(2) to delete "may" and substitute "shall." The Subgroup discussed the impact of the suggested revision, including that it could be detrimental to consumers because it might reduce insurer flexibility in determining a consumer's ability to perform certain duties in determining whether the consumer is totally disabled. After additional discussion, the Subgroup did not accept the suggested revision.

The Subgroup next discussed the Schiffbauer Law Office's suggestion to add the word "only" to Section 7A(2) and Section 7A(3) for consistency in referring to an "accident only" policy. The Subgroup accepted the suggested revision.

The Subgroup next discussed the comments received on Section 7D. Matthews explained that some of the comments concerned the note to the Subgroup about clarifying the term "malformed" in Section 7D(5). The Subgroup discussed the comments. After additional discussion, the Subgroup determined that the term needed no clarification and left the provision unchanged. The Subgroup next discussed the NAIC consumer representatives' comments concerning the permissible exclusion from coverage for "mental or emotional

disorders, alcoholism, and drug addiction" in Section 7D(2). In addition, the NAIC consumer representatives expressed concern with the permissible exclusion from coverage for "suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury" in Section 7D(4)(b).

Lucy Culp (The Leukemia & Lymphoma Society—LLS) said the NAIC consumer representatives strongly object to the inclusion of "mental or emotional disorders, alcoholism, and drug addiction" and "suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury" as allowable exceptions for any type of supplemental or short-term policies. She said that continuing to include this language in Model #171 is not only out of step with advances in the mental health field, but it is also at odds with the NAIC's commitment to mental health parity and meaningful response to the opioid crisis. The Subgroup discussed the NAIC consumer representatives' comments, but they did not finish the discussion. The Subgroup plans to continue the discussion during its next scheduled meeting on March 25.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/B CMTE/RFTF/Accident and Sickness Subgrp/Accident and Sickness Ins Min Stds Subgrp 2-26-24 MtgMin.docx

Draft: 3/4/24

Accident and Sickness Insurance Minimum Standards (B) Subgroup
Virtual Meeting
February 12, 2024

The Accident and Sickness Insurance Minimum Standards (B) Subgroup of the Regulatory Framework (B) Task Force met Feb. 12, 2024. The following Subgroup members participated: Andy Schallhorn, Co-Chair (OK); Rachel Bowden, Co-Chair (TX); Howard Liebers and Stephen Flick (DC); Christina Jackson (FL); Sherry Worth (ME); Maggie Reinert (NE); Heidi Clausen (UT); Anna Van Fleet and Jamie Gile (VT); and Ned Gaines (WA).

1. Continued Discussion of Dec. 1, 2023, Comments Received on Draft Revisions to Model #171

Before continuing its discussion of the Dec. 1, 2023, comments submitted on the Oct. 12, 2023, draft of proposed revisions to the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act* (#171), the Subgroup discussed alternative suggested language for Section 6B(1)(d) to address the issue discussed during its Jan. 29 meeting that assisted living facilities and continued care retirement facilities do not provide continuous 24-hour nursing services. During its Jan. 29 meeting, the Subgroup decided to develop a new definition for these facilities without including the continuous 24-hour nursing provision. Following that meeting, NAIC staff developed and distributed alternative language to address the issue for the Subgroup's consideration. The alternative suggested language carves out assisted living facilities and continued care retirement facilities from the 24-hour nursing requirement in Section 6B(1)(d). After discussion, the Subgroup accepted the NAIC staff's alternative suggested language. Lucy Culp (The Leukemia & Lymphoma Society—LLS) expressed concern with the word "primarily" in Section 6B(1)(c) because not all the facilities listed in Section 6B would "primarily" provide skilled nursing care. After discussion, the Subgroup agreed to delete the word "primarily" from Section 6B(1)(c).

The Subgroup continued its discussion of the Dec. 1, 2023, comments beginning with the NAIC consumer representatives' suggested revision to Section 6C regarding the definition of "hospital." The NAIC consumer representatives suggest removing the provision that allows insurers to exclude a military or veterans' hospital from the definition of "hospital." The NAIC consumer representatives suggest this deletion because it allows for a coverage exclusion for members of the military or veterans. The Subgroup discussed the rationale for retaining the provision. After additional discussion, the Subgroup decided to retain the provision but delete the words "rendered on an emergency basis."

The Subgroup next discussed the NAIC consumer representatives' suggestion to add "including goods and services" to the definition of "partial disability" in Section 6H(2). NAIC staff explained that the Subgroup considered and decided not to accept a similar suggested revision during a meeting on Nov. 19, 2019. Culp said the NAIC consumer representatives are raising this suggested revision again because when the Subgroup discussed it previously, she recalls that the NAIC consumer representative with knowledge of this issue was unavailable to participate. She explained that adding this language would address when an individual providing certain services, such as home health care services, is paid using an alternative payment method like housing or rent. The Subgroup discussed the suggested revision, noting the difficulty insurers would have in putting a value on this type of payment and the potential for fraud. After additional discussion, the Subgroup decided not to accept the suggested revision.

The Subgroup next discussed the NAIC consumer representatives' comments on Section 6I(2), the definition of "physician." The NAIC consumer representatives questioned whether the Subgroup intended to create such a broad exclusion as to the ability of a physician who may be a family member of the insured or have a significant

business interest with the insured to approve and/or certify care for the insured. The Subgroup discussed the rationale for the provision, such as preventing fraud, and why the language might be considered broad. After discussion, the Subgroup decided to leave the provision unchanged.

The Subgroup next discussed Section 6J, the definition of "preexisting condition." Jolie Matthews (NAIC) explained that during its previous discussions of this definition, the Subgroup discussed but did not make a definitive decision on whether it should develop a separate definition of this term for short-term, limited-duration (STLD) plans. Instead, the Subgroup requested that NAIC staff make a note of the issue and have the Subgroup return to it after it completes its review of the entire model. Matthews said that in requesting comments on the Oct. 12, 2023, draft, the Subgroup received comments from stakeholders on whether to maintain the existing definition should remain unchanged and apply it to all products regulated under Model #171 or to develop a separate definition for STLD plans. The Subgroup deferred additional discussion of Section 6J until its next meeting scheduled for Feb. 26.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/B CMTE/RFTF/Accident and Sickness Subgrp/Accident and Sickness Ins Min Stds Subgrp 2-12-24 MtgMin.docx

Draft: 2/13/24

Accident and Sickness Insurance Minimum Standards (B) Subgroup
Virtual Meeting
January 29, 2024

The Accident and Sickness Insurance Minimum Standards (B) Subgroup of the Regulatory Framework (B) Task Force met Jan. 29, 2024. The following Subgroup members participated: Andy Schallhorn, Co-Chair (OK); Rachel Bowden, Co-Chair (TX); Stephen Flick (DC); Christina Jackson (FL); Frank Opelka (LA); Camille Anderson-Weddle (MO); Martin Swanson (NE); Shari Miles (SC); Shelley Wiseman and Heidi Clausen (UT); Anna Van Fleet, Mary Block, and Jamie Gile (VT); and Ned Gaines (WA).

1. Began Discussion of Dec. 1, 2023, Comments Received on Draft Revisions to Model #171

Before beginning discussion of the Dec. 1, 2023, comments submitted on the Oct. 12, 2023, draft of proposed revisions to the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act* (#171), the Subgroup heard an overview of the comments from stakeholders submitting comments—the American Council of Life Insurers (ACLI), America's Health Insurance Plans (AHIP), the NAIC consumer representatives, the Health Benefits Institute (HBI), and the Schiffbauer Law Office.

Cindy Goff (ACLI) said that as the Subgroup requested, the ACLI's comments did not revisit previous Subgroup policy decisions. The ACLI's comments focused on outstanding questions and issues outlined in the draft. She provided an overview of the comments. Chris Petersen (Arbor Strategies LLC), speaking on behalf of AHIP, discussed AHIP's comments. He said that, like the ACLI, AHIP's comments focused on the outstanding questions and issues outlined in the draft. J.P. Wieske (HBI) said the HBI's comments also focused on the outstanding questions and issues outlined in the draft. He said the HBI's comments also expressed strong support for the Subgroup's efforts and its express statements not wanting comments from stakeholders on questions and issues the Subgroup already decided.

Lucy Culp (The Leukemia & Lymphoma Society—LLS) said the NAIC consumer representatives also focused on the outstanding issues and questions outlined in the draft. She said, however, that the NAIC consumer representatives have concerns with certain language in the draft, particularly provisions that include "mental or emotional disorders, alcoholism, and drug addiction" and "suicide (sane or insane), attempted suicide or intentionally self-inflicted injury" as allowable exceptions for any type of supplemental or short-term policy. Culp said that continuing to include this language in the model is not only out of step with advances in the mental health field, but it is also at odds with the NAIC's commitment to mental health parity and meaningful response to the opioid crisis. She urged the Subgroup to revisit this provision and adopt a minimum standard that will protect consumers and align with the values that the states and the NAIC share as it relates to mental health parity. William Schiffbauer (Schiffbauer Law Office) said his comments focused on technical drafting issues.

The Subgroup began its review of the Dec. 1, 2023, comments with comments submitted by the Schiffbauer Law Office on Section 5—Definitions. The comments suggest adding a definition of "excepted benefits" to this section because the term is used in the model. The Subgroup discussed the suggested revision. Some commenters noted that "excepted benefits" are not referenced in the model text, only in drafting notes. After additional discussion, the Subgroup decided to add a definition of "excepted benefits" using the suggested language the first time the term is used in a drafting note.

The Subgroup next discussed the NAIC consumer representatives' suggested revisions to Section 6B—Policy Definitions. The NAIC consumer representatives suggest removing the word "home" throughout this definition

and replacing it with "facility" to eliminate language no longer used to refer to these types of facilities. The NAIC consumer representatives also suggest revisiting the definition for the terms used in Section 6B(1) or changing the "and" at the end of Section 6B(1)(d) to an "or" because the requirements listed describe a level of care that is inconsistent with the terms they are defining above. Specifically, assisted living facilities and continued care retirement communities do not provide continuous 24-hour nursing. The Subgroup discussed each of the suggested revisions. Some Subgroup members and interested parties expressed concern about removing the word "home" because the term is still being used in in-force policies, and because of that, removing it could cause unintended consequences. The Subgroup also expressed concern with removing the term when there have been no issues with its inclusion to date. After additional discussion, the Subgroup decided not to accept the suggested revision to remove "home."

The Subgroup discussed the NAIC consumer representatives' second suggested revision. After discussion, the Subgroup decided not to accept the second suggested revision because of the necessity of needing the "and" to ensure compliance with all the requirements. The Subgroup agreed that the requirements of Section 6B(1)(d) for a facility or home to provide continuous 24-hour nursing would not be consistent with the services provided by an assisted living facility or a continued care retirement facility. The Subgroup noted that these types of facilities were added to the draft and not part of the existing model language. After additional discussion, the Subgroup decided to remove "assisted living facility" and "continued care retirement facility" from Section 6B and develop a new definition for these terms without including the Section 6B(1)(d) continuous 24-hour nursing provision.

The Subgroup next discussed the NAIC consumer representatives' suggested revision to Section 6C, the definition of "hospital," to remove a provision that allows insurers to exclude a military or veterans' hospital from the definition of "hospital." The NAIC consumer representatives suggest this deletion because it allows for a coverage exclusion for members of the military or veterans. The Subgroup began discussion of the suggested revision, but it deferred taking any action and plans to continue its discussion during the Subgroup's next meeting scheduled for Feb. 12.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/B CMTE/RFTF/Accident and Sickness Subgrp/Accident and Sickness Ins Min Stds Subgrp 1-29-24MtgMin.docx

Draft: 12/11/23

Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group
Orlando, Florida
December 2, 2023

The MHPAEA (B) Working Group of the Regulatory Framework (B) Task Force met in Orlando, FL, Dec. 2, 2023. The following Working Group members participated: Erica Weyhenmeyer, Chair (IL); Jane Beyer, Vice Chair (WA); Crystal Phelps (AZ); Gio Espinosa (AZ); Kate Harris (CO); Kurt Swan (CT); Howard Liebers (DC); Andria Seip (IA); LeAnn Crow and Julie Holmes (KS); Mary Kwei (MD); Paul Hanson (MN); Amy Hoyt (MO); Ted Hamby (NC); Chrystal Bartuska (ND); Sarah Cahn (NH); Paige Duhamel (NM); Kyla Dembowski (OH); Landon Hubbart (OK); Shannon Logue and Lindsi Swartz (PA); Jill Kruger (SD); Ryan Jubber and Shelley Wiseman (UT); Julie Fairbanks (VA); Darcy Paskey and Rebecca Rebholz (WI); Joylynn Fix (WV), and Tana Howard (WY).

1. Heard a Panel Discussion on the Tri-Departments' Proposed Rule on Mental Health Parity

Swartz shared news of the death of Sam Muszynski. She recognized the contributions Muszynski made to the passage of the federal Mental Health Parity and Addiction Equity Act (MHPAEA) and the compliance tool used to support its implementation. She said he carried the torch of parity for five decades and inspired others to work to improve the lives of those living with mental health and substance use disorders.

Beth Baum (Employee Benefits Security Administration (EBSA), U.S. Department of Labor—DOL) said the DOL received 9,500 comments on its proposed regulations on mental health parity. She said many comments were very detailed and lengthy and that the DOL would take care in reviewing them.

Weyhenmeyer summarized state insurance regulators' comments on the proposed regulations. She said state insurance regulators focused on the application of the predominant and "substantially all" tests to non-quantitative treatment limits (NQTLs); the exceptions for independent standards and fraud, waste, and abuse; and the collection of outcomes data. She asked the panelists about applying the predominant and "substantially all" tests to NQTLs.

Meghan Stringer (AHIP) said AHIP's members are committed to making sure their enrollees have access to mental health services. She said AHIP's priority is that patients can access the right care at the right time in the right setting.

Stringer said AHIP believes the predominate and "substantially all" tests are not appropriate or workable. She said they could prohibit all medical necessity reviews prior to or concurrent with care. She said AHIP agrees with NAIC's comments that the tests could add substantial burden without proportional benefits in access to care. Kate Berry (AHIP) said health insurers are fully committed to mental health parity. She added that the new terms and tests would shift from processes and standards being the focus of compliance to outcomes. She said much has been done to improve access and quality and more work needs to be done, but AHIP has concerns with the proposed rule's ability to improve access and availability of care.

Tim Clement (American Psychiatric Association—APA) said the predominate test may not be workable in the real world and could be skipped. He said applying the "substantially all" test would not limit utilization review in the inpatient category. For outpatient benefits, he said the test would increase access and reduce utilization review. He said plans and issuers could meet the "substantially all" test by designing benefits differently for medical

services. He said some post-payment reviews could be reduced, which would be a benefit. He said the proposed rule is not the end of utilization review.

Lauren Finke (The Kennedy Forum—Forum) said the Forum is supportive of applying the tests to NQTLs. She said the statute is clear that benefits for mental health should be no more restrictive. She said the rule should stay as close as possible to the statute. She said the tests have been successful for quantitative treatment limits and should be extended to NQTLs.

Weyhenmeyer asked about ways to reduce the burden of applying the tests. Stringer said the federal Fiscal Year 2021 Consolidated Appropriations Act (CCA) updates to the MHPAEA statute codified tests for NQTLs that were previously in the rules. She said AHIP supports updating those design and application tests. She said those tests would be more workable than the proposed rule. She said the proposal hinders the ability to apply utilization management, requiring a math test rather than clinical evidence. She said building on the current tests could include finding meaningful outcomes data.

Clement said the NQTL language that existed since 2010 is still in place. He said the predominate and "substantially all" tests have been in the statute since 2008 and apply to treatment limitations. He said it could be argued that those tests should have been in place for 15 years, but he did not endorse this view. He said that with creative thinking, the proposed rule would not necessarily transform utilization review. He said there is a way to make it workable and agreed that the work should be built upon the last several years. He said the impacts of the tests would not necessarily be game-changing.

Finke agreed and said state and federal regulators have recently been more successful in holding plans and issuers accountable for compliance. She said a fundamental piece of parity is that NQTLs do limit access. She said the current regulations have been insufficient to hold plans accountable for NQTLs, increasing the burden of mental health. She said the status quo is not acceptable because of inadequate access to care.

Weyhenmeyer asked about exceptions included in the proposed rule. Clement said the exceptions for independent treatment standards or fraud, waste, and abuse are ways to get around the "substantially all" test. He said these exceptions moderate the test. He said the phrasing of the exceptions could allow almost anything through because almost any limit could be deemed an effort to reduce waste. He urged state departments of insurance (DOIs) to narrow the exceptions with more structure on what qualifies as efforts to combat fraud, waste, and abuse.

Finke said independent standards and efforts to combat fraud, waste, and abuse should be embedded into the existing NQTL framework as well as the proposed extensions. She said state DOIs should establish additional safeguards around the exceptions. She said the exceptions are too open-ended in the proposal and should be incorporated into the existing framework.

Stringer said plans are concerned the exceptions may be too narrow. She said standards of care and combatting fraud, waste, and abuse improves patient care. Because the proposed rule does not fully explain the exceptions, plans remain concerned. AHIP recommends that the federal departments adopt Georgia's definition of generally accepted standards of care. Berry supported more emphasis on adding guidelines for standards of care. Stringer said plans are concerned the exceptions may not allow them to address fraud.

Weyhenmeyer asked about the proposal's requirements to collect outcomes data. Finke said the Forum supports collecting data to assess the impact of treatment limits. She said standardized data is important and that data on access are rarely collected and analyzed. She said state DOIs should clarify that mental health and substance use disorder data should be collected and analyzed separately.

Stringer said health plans need to know what data regulators are looking for so they can provide it the first time. She said regulators should develop a definitive list of data to be collected for each NQTL, even if the list is not static. She said plans need to know what to expect and the time to collect needed data. She said not all NQTLs have data that can be easily assessed. She asked for consistency across the states, with federal regulators, and across product lines.

Clement agreed that data would not be useful for all NQTLs but said those outlined in the proposed rule do have relevant data. He recommended a fusion between out-of-network utilization data and reimbursement data. He said provider shortages exist for both mental health and physical health providers. He said regulators should compare out-of-network utilization and reimbursement for physical health provider types that have shortages to mental health providers that also have shortages.

Weyhenmeyer asked whether regulators should require plans to submit standardized data. Finke said plans and issuers should be required to submit standardized data. She said regulators should not rely on only process-related measures but instead require outcomes data that directly address disparities.

Stringer outlined AHIP's priorities on outcomes data, including workability, meaningfulness, certainty, and consistency. She said state insurance regulators should use metrics consistent with those in the final federal rule or deem compliance with state standards when federal standards are met.

Clement said regulators should decide how the data are reported. He said organizations are not trying to hide information, but categories, such as denials, can mean different things to different plans. He said more precision is needed in the definition of terms, such as fraud, waste, and abuse.

Finke said the spirit and text of the mental health parity law should be followed. She said medically necessary access to care is the goal and many aspects of the proposed rule move forward in that direction.

Berry said access and quality in mental health services are important. She said the proposed rules will not move in that direction and instead could erode access to care. She said a collaborative engagement process could improve the proposal.

Having no further business, the MHPAEA (B) Working Group adjourned into regulator-to-regulator session, pursuant to paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings, to continue work on its goals.

SharePoint/NAIC Support Staff Hub/Member Meetings/B CMTE/RFTF/MHPAEAWG Min 12.2.docx

Draft: 2/29/24

2024 Revised Proposed Charges

REGULATORY FRAMEWORK (B) TASK FORCE

The mission of the Regulatory Framework (B) Task Force is to: 1) develop NAIC model acts and regulations for state health care initiatives; and 2) consider policy issues affecting state health insurance regulation.

Ongoing Support of NAIC Programs, Products, or Services

1. The **Regulatory Framework (B) Task Force** will:
   A. Coordinate and develop the provision of technical assistance to the states regarding state-level implementation issues raised by federal health legislation and regulations.
   B. Review managed health care reforms, their delivery systems occurring in the marketplace, and other forms of health care delivery. Recommend appropriate revisions to regulatory jurisdiction, authority, and structures.
   C. Consider the development of new NAIC model laws and regulations and the revision of existing NAIC model laws and regulations, including those affected by federal legislation and final federal regulations promulgated pursuant to such legislation.
   D. Continue to review NAIC models recommended for revision by the former Affordable Care Act (ACA) Model Review (B) Working Group and, as appropriate, appoint a working group or subgroup to revise the NAIC model(s) prioritized for revision in 2024.
   E. At the direction of the Health Insurance and Managed Care (B) Committee, through the work of the Employee Retirement Income Security Act (ERISA) (B) Working Group, monitor, analyze, and report developments related to association health plans (AHPs).
   F. Monitor, analyze, and report, as necessary, developments related to short-term, limited-duration (STLD) coverage.

2. The **Accident and Sickness Insurance Minimum Standards (B) Subgroup** will:
   A. Review and consider revisions to the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act* (#171).

3. The **ERISA (B) Working Group** will:
   A. Monitor, report, and analyze developments related to ERISA, and make recommendations regarding NAIC strategy and policy with respect to those developments.
   B. Monitor, facilitate, and coordinate with the states and the U.S. Department of Labor (DOL) efforts related to sham health plans.
   C. Monitor, facilitate, and coordinate with the states and the DOL regarding compliance and enforcement efforts regarding the ACA that relate to ERISA.
   D. Review the *Health and Welfare Plans Under the Employee Retirement Income Security Act: Guidelines for State and Federal Regulation* (ERISA Handbook) and modify it, as necessary, to reflect developments related to ERISA. Report annually.

REGULATORY FRAMEWORK (B) TASK FORCE *(continued)*

4. The **Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group** will:
   A. Monitor, report, and analyze developments related to the MHPAEA, and make recommendations regarding NAIC strategy and policy with respect to those developments.
   B. Monitor, facilitate, and coordinate best practices with the states, the DOL, and the U.S. Department of Health and Human Services (HHS) related to the MHPAEA.
   C. Develop and provide resources to the states to support a greater understanding of laws, policies, and market conditions related to the MHPAEA.
   D. Provide supplemental resources to support documentation and reporting in the MHPAEA chapter of the *Market Regulation Handbook*.
   E. Coordinate with and provide input to Market Regulation and Consumer Affairs (D) Committee groups, as necessary, regarding mental health parity market conduct examinations.

5. The ~~**Pharmacy Benefit Manager Regulatory Issues (B) Subgroup**~~**Pharmaceutical Benefit Management Regulatory Issues (B) Working Group** will:
   A. ~~Develop a white paper to: 1) analyze and assess the role pharmacy benefit managers (PBMs), pharmacy services administrative organizations (PSAOs), and other supply chain entities play in the provision of prescription drug benefits; 2) identify, examine, and describe current and emerging state regulatory approaches to PBM business practices, such as price transparency and reporting requirements, rebating, and spread pricing, including the implications of the *Rutledge v. Pharmaceutical Care Management Association (PCMA)* decision on such business practices; and 3) discuss any challenges, if any, the states have encountered in implementing such laws and/or regulations.~~
   ~~B. Consider developing a new NAIC model to establish a licensing or registration process for PBMs. Based on issues identified in the white paper, the Subgroup may consider including in the new NAIC model provisions on PBM prescription drug pricing and cost transparency.~~
   A. Serve as a forum to educate state insurance regulators on issues related to pharmacy benefit manager (PBM) regulation and other stakeholders in the prescription drug ecosystem.
   B. Gather and share information, best practices, experience, and data to inform and support dialogue and information-sharing among state insurance regulators on issues related to PBM regulation, such as examinations and contracting, and pharmaceutical drug pricing and transparency.
   C. Review and consider any necessary updates to the *Health Carrier Prescription Drug Benefit Management Model Act* (#22) out of the emergence of greater regulation in the prescription drug ecosystem.
   D. Maintain a current listing of PBM laws and regulations and case law for reference by state insurance regulators.
   E. Disseminate materials and reports, via the NAIC, to the states and the U.S. territories wishing to use the information gathered by the Working Group.
   F. Monitor, facilitate and coordinate with the states and federal agencies regarding compliance and enforcement efforts regarding PBMs.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/B CMTE/RFTF/011_RFTF Adopted Rev 2024 Charges.docx

