

## PROJECT HISTORY - 2013

### INDIVIDUAL MARKET HEALTH INSURANCE COVERAGE MODEL ACT (#36)

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

At the 2011 Spring National Meeting, the Regulatory Framework (B) Task Force discussed a work plan to develop one or more new NAIC models that would incorporate the 2014 market reforms under the Patient Protection and Affordable Care Act (ACA) and its Sept. 23, 2010 immediate reform provisions. At the 2012 Spring National Meeting, the Regulatory Framework (B) Task Force decided to develop two new NAIC model acts: one for the non-group market and the second for the small group market. The Regulatory Framework (B) Task Force adopted the Individual Market Health Insurance Coverage Model Act Nov. 29 at the 2012 Fall National Meeting and presented it to the Health Insurance and Managed Care (B) Committee for its consideration. As part of the Task Force's report, the Health Insurance and Managed Care (B) Committee adopted the Individual Market Health Insurance Coverage Model Act on Nov. 30.

Major provisions in the model act include:

Provisions reflecting the ACA's 2014 market reforms:

- Restrictions Relating to Premium Rates (Section 5)
- Guaranteed Availability of Individual Market Health Insurance Coverage (Section 6)
- Guaranteed Renewability of Individual Market Health Insurance Coverage (Section 7)
- Prohibition of Preexisting Condition Exclusions (Section 9)
- Comprehensive Health Insurance Coverage Requirements (Section 13)
- Coverage for Participation in Approved Clinical Trials (Section 15)
- Provision of Summary of Benefits and Coverage Explanation (Section 17)
- Quality of Care Reporting Requirements (Section 20)

Provisions using the model language template language from the ACA's Sept. 23, 2010 immediate reform provisions:

- Extension of Dependent Coverage (Section 8)
- Prohibition on Lifetime and Annual Limits (Section 11)
- Prohibition on Rescissions of Coverage (Section 12)
- Coverage of Preventive Health Services (Section 14)
- Choice of Health Care Professional; Access to Pediatric and Obstetrical and Gynecological Care Requirements (Section 16)

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

The Regulatory Framework (B) Task Force drafted the model language. The members of the Task Force are: South Dakota, Chair, Idaho, Vice Chair, California, Colorado, District of Columbia, Florida, Illinois, Kansas, Kentucky, Maine, Minnesota, Montana, Nebraska, Nevada, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Washington, West Virginia and Wisconsin.

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

The Regulatory Framework Task Force has a general charge to: coordinate and develop the provision of technical assistance to the states regarding state level implementation issues raised by federal health legislation and regulations. The Task Force also has a specific charge to consider the development of new NAIC model laws and regulations and the revision of existing NAIC model laws and regulations affected by federal legislation and final federal regulations promulgated pursuant to such legislation.

After the enactment of the ACA in March 2010, consistent with its charges, the Health Insurance and Managed Care (B) Committee directed the Regulatory Framework (B) Task Force to review and revise existing NAIC models impacted by the ACA or, as necessary, develop new NAIC models to assist the states in implementing the ACA. This proposed new NAIC model act is consistent with that directive.

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

The model act was drafted by the Regulatory Framework (B) Task Force. The Task Force held in-person meetings at each of the 2012 National Meetings and at a June 26, 2012 interim meeting during which the drafts and comments received on the drafts were discussed. The drafts and comments received on the drafts were also discussed during open conference calls held on Sept. 19, Oct. 24 and Nov. 19, 2012. All drafts and comments were posted on the Task Force's page on the NAIC Internet website. During these in-person meetings and open conference calls representatives from various stakeholder groups participated, including consumer representatives, such as Georgetown University Health Policy Institute, Consumers for Affordable Health Care, Center on Budget and Policy Priorities (CBPP), Consumers Union and Families USA; and industry representatives, such as America's Health Insurance Plans (AHIP), BlueCross and BlueShield Association (BCBSA), WellPoint and Golden Rule.

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

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

There were two significant issues of controversy discussed and resolved by the Task Force during the drafting process. One of the issues related to the exception to guaranteed availability for bona fide associations. Initially, the draft of the model act had removed this exception, which was derived from a requirement under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), because it was rendered moot by the ACA due to the ACA's guaranteed issue requirements in the individual market. HIPAA had included this exception to guaranteed issue for bona fide associations so that such associations would not be required to provide coverage to HIPAA-eligibles. However, given the guaranteed issue requirements for the individual market under the ACA, logically, it seemed that this HIPAA-imposed exception was no longer relevant. During the discussions of this issue, some urged the Task Force to retain the exception saying that it was not clear that the U.S. Department of Health and Human Services (HHS) had decided that this exception was moot, while others suggested that, given the ACA's individual market guaranteed availability provisions, it was clear that the exception was no longer relevant. The final draft of the model act deleted the specific exception for guaranteed issue for bona fide associations. However, this provision in the model act includes two drafting notes alerting the states to the controversy. The drafting notes highlight provisions contained in the proposed regulations issued by HHS, as published in the *Federal Register*, Nov. 26, 2012, which appear to require health carriers to offer plans to all individuals regardless of membership in a bona fide association. The drafting notes also suggest that, given these provisions, those states that have existing laws on this issue related to bona fide associations may wish to review that language and consider repealing it until HHS issues its final regulations and address the issue at that time.

The other significant issue the Task Force discussed and resolved during the drafting process concerned how to address, if at all, student health insurance coverage, which has been defined in federal regulations as a type of individual health insurance coverage. Initially, a draft of the model act had proposed not including student health insurance coverage in the model act by carving such coverage out of the definition of "individual health insurance coverage." This approach was suggested due to the possible complexities of trying to include it the model act because many provisions of the Public Health Service Act (PHSA) and the ACA do not apply to student health insurance coverage. The model act is intended to set out the requirements for individual health insurance coverage for which all of the requirements of the PHSA and ACA apply. During the discussions of this issue, some suggested that student health insurance coverage be included in the model act because of a concern that requirements related to such coverage would not be immediately addressed in other possible NAIC model acts or regulations. The Task Force reached a consensus and adopted compromise language adding student health insurance coverage to the model act.

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

None