

Draft: 10/26/22

Senior Issues (B) Task Force
Virtual Meeting
October 17, 2022

The Senior Issues (B) Task Force met Oct. 17, 2022. The following Task Force members participated: Jon Pike, Vice Chair (UT); Lori K. Wing-Heier represented by Sarah Bailey (AK); Mark Fowler represented by Willard Smith (AL); Evan G. Daniels represented by Jon Savary (AZ); Ricardo Lara represented by Tyler McKinney (CA); Andrew N. Mais represented by Paul Lombardo (CT); Trinidad Navarro represented by Frank Pyle (DE); David Altmaier represented by Chris Struk (FL); John F. King represented by Paula Shamburger (GA); Colin M. Hayashida represented by Lisa Zarko (HI); Dean L. Cameron represented by Shannon Hohl (ID); Vicki Schmidt represented by Craig VanAalst (KS); Sharon P. Clark represented by Stephanie McGaughey-Bowker (KY); James J. Donelon represented by Ron Henderson (LA); Gary D. Anderson represented by Kevin Beagan (MA); Kathleen A. Birrane represented by Jamie Sexton (MD); Timothy N. Schott represented by Marti Hooper (ME); Anita G. Fox represented by Renee Campbell (MI); Chlora Lindley-Myers (MO); Troy Downing represented by Ole Olson (MT); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Yuri Venjohn (ND); Eric Dunning represented by Martin Swanson (NE); Barbara D. Richardson represented by Jack Childress (NV); Judith L. French represented by Tynesia Dorsey (OH); Glen Mulready represented by Andrew Schallhorn (OK); Andrew R. Stolfi represented by Lisa M. Beck (OR); Michael Humphreys represented by Shannen Logue (PA); Carter Lawrence represented by Brian Hoffmeister (TN); Cassie Brown represented by Dannette Smith (TX); Scott A. White represented by Julie Blauvelt (VA); Kevin Gaffney represented by Mary Block (VT); Mike Kreidler represented by Ned Gaines (WA); Nathan Houdek represented by Diane Dambach (WI); and Allan L. McVey represented by Joylynn Fix (WV). Also participating were: Eric Anderson (IL); Bogdanka Kurahovic (NM); Martin Wojcik (NY); Patrick Smock (RI); and Tana Howard (WY).

1. Adopted its 2023 Proposed Charges

Director Lindley-Myers made a motion, seconded by Ms. Campbell, to adopt the Task Force's 2023 proposed charges (Attachment One). The motion passed unanimously.

2. Heard a Discussion About Medicare and COBRA

Commissioner Pike asked Bonnie Burns (California Health Advocates—CHA) to summarize her previous presentations on this issue for the Task Force. Ms. Burns said the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) is a federal law giving one the legal right to keep their employer's health benefits that might otherwise end due to job loss, divorce, or death. She said employers of a certain size are required to offer COBRA when one retires or leaves an employer, and this is the same health plan coverage one had while working. Yet, federal health benefit payment rules that apply while one is working and eligible for Medicare are not the same after one stops working and is eligible for COBRA and Medicare at the same time.

Ms. Burns provided as an example a 76-year-old client who left employment and signed up for Medicare Part A at age 65 but did not sign up for Part B as he was still working. She said the employer, a large group health benefits consultant, provided eight months free of COBRA as part of his separation agreement, and he was provided with a lot of verbal instruction. She said the COBRA carrier, a large group health benefits company, paid the COBRA primary benefits, but at six months, the carrier discovered eligibility for Medicare but was not enrolled for benefits. She said the client had large medical expenses, and the carrier sought recovery for \$80,000 of primary COBRA paid benefits.

Ms. Burns said COBRA is the same primary health benefits as when employed. She said the former employee pays 100% of premium plus an administrative fee. She said with or without Medicare benefits, Medicare Secondary Payer (MSP) rules do not apply. She said COBRA is automatically secondary, and added there is a disconnect between Social Security and Medicare.

Ms. Burns said the *Coordination of Benefits Model Regulation* (#120) exception pertaining to people who are eligible or who could be eligible for Medicare benefits is unfairly discriminatory. She said the NAIC should delete the exception for Medicare Part B in Model #120, as there is no rationale for this exception in the NAIC historical record, and it unfairly penalizes and discriminates against Medicare beneficiaries. She said the action specified in the exception, “is or could have been covered,” produces a result that is expressly prohibited in the same subsection for any other form of health benefits. She recommended changes to parts of Section 5D of Model #120. Silvia Yee (Disability Rights Education and Defense Fund—DREDF) said she supports Ms. Burns’ proposal.

Commissioner Pike asked Ms. Burns about her proposed edits to Section 5D. Ms. Burns said she believes the edits could help eliminate this one exception that allows insurers either not to pay benefits at all or to reduce the benefits. She said she would appreciate comments to understand if the proposal she offered would make a difference as she is not an attorney.

Ms. Hohl asked how this would interact with MSP rules and whether that would create a conflict, as that may be where the real issue comes into play. She asked whether it makes sense to revise the language without looking at the MSP rules. Ms. Burns said the MSP rules only apply when a person is actively working, and they apply to the employer group health plan while working; but once a person is not working, under Internal Revenue Service (IRS) rules, the MSP rules do not apply and do not apply to COBRA because COBRA is something one gets when not working.

Jacqueline Cipa (Centers for Medicare & Medicaid Services—CMS), Deputy Director of Medicare Secondary Payer Operations of the CMS, said she was not really aware of these concerns and all the nuances raised, but she invited Ms. Burns to reach out and speak with her office in more detail. Ms. Burns said she is happy to have this discussion. She also asked the CMS to examine all of the information on Medicare.gov because there is nothing about when a person leaves employment and what happens to them regarding the impact of being eligible for Medicare.

Amber Rivers (U.S. Department of Labor—DOL), Director of the Office of Health Plan Standards and Compliance Assistance of the Employee Benefits Security Administration of the DOL, said this matter came on the DOL’s radar back in 2020 from a congressional letter received, and what the DOL tried to do was better highlight the interaction with Medicare in the context of consumers not only receiving the general notice about COBRA but also the election notice to help inform consumers. She said there are specific statutory requirements under COBRA that deal with the continuation of coverage provisions, and they have tried to make model notice more robust, but they are not required, and she said the DOL is open to further discussion on how to make it better for consumers. Ms. Burns said she appreciates that the notices are more robust, but consumers are still not getting these notices, and nearly all the information a consumer receives is verbal from their human resources (HR) department.

Ms. Blauvelt said the change Ms. Burns proposes may help with a similar issue involving federal Affordable Care Act (ACA) small group plans, not COBRA, but there are parallel similarities as it pertains to Model #120. She said she had inquired about whether other states have guidance or information regarding the coordination of benefits with marketplace consumers of Medicare age who are not enrolled in Medicare for either residency ineligibility (e.g., recently immigrated to the U.S.); insured to pay Part A premium; and/or eligible but not yet enrolled. She said perhaps including a reference to Part A in Ms. Burns’ suggested edits could help.

Ms. Burns said the issue is different, but the suggested edits to Model #120 could help with Ms. Blauvelt's issue as well. She said Model #120 Sections 5D(1), (2), and (3) tell an insurer they cannot do the things listed in Sections 5D(1), (2), and (3), and the creation of subsection (4) was suggested for clarity, but not including subsection (4) may actually help both issues. She said she would like some clarity from state insurance regulators regarding whether they think her proposals would do what she intends.

William G. Schiffbauer (Schiffbauer Law Office) said he and Guenther Ruch (GHR Consulting LLC) looked at this issue a few years back for Ms. Burns and came up with the suggestion of adding a subsection (4) to be more explicit. Ms. Burns said perhaps to be more explicit, the proposed subsection (4) could either not include the words "Part B" or include the words "Part A and Part B."

Commissioner Pike asked Ms. Burns if she would like to sit down first with the DOL and/or the CMS and then sit down with state insurance regulators so everyone is on the same page. Ms. Burns said she does not see a reason to sit with the DOL first, as the issue of editing the model is separate from the DOL and the CMS, just as the things the DOL should do is separate from the NAIC. Mr. Schiffbauer felt it would be helpful to meet with the DOL and the CMS and see if the proposed additional language works and everyone can be on the same page.

Commissioner Pike said he would appreciate any direction on how to proceed with Model #120, and he will discuss this further with Commissioner Caride and NAIC staff.

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

[SITF Minutes 10-17-22](#)

Adopted by the Executive (EX) Committee and Plenary, Dec. xx, 2022
Adopted by the Health Insurance and Managed Care (B) Committee, Dec. xx, 2022
Adopted by the Senior Issues (B) Task Force, Oct 17, 2022

2023 Proposed Charges

SENIOR ISSUES (B) TASK FORCE

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

Ongoing Support of NAIC Programs, Products, or Services

1. The Senior Issues (B) Task Force will:
 - A. Develop appropriate regulatory standards and revisions, as necessary, to the NAIC models, consumer guides, and training material on Medicare supplement insurance, senior counseling programs, and other insurance issues that affect older Americans. Work with federal agencies to advance appropriate regulatory standards for Medicare supplement and other forms of health insurance applicable to older Americans. Review the *Medicare Supplement Insurance Minimum Standards Model Act (#650)* and the *Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)* to determine if amendments are required based on changes to federal law. Work with the federal Centers for Medicare & Medicaid Services (CMS) to revise the annual joint publication, *Choosing a Medigap Policy: A Guide to Health Insurance for People with Medicare*.
 - B. Monitor the Medicare Advantage and Medicare Part D marketplace. Assist the states, as necessary, with regulatory issues. Maintain a dialogue and coordinate with the CMS on regulatory issues, including solvency oversight of waived plans and agent misconduct. Assist the states and serve as a clearinghouse for information on Medicare Advantage plan activity.
 - C. Provide the perspective of state insurance regulators to the U.S. Congress (Congress), as appropriate, and the CMS on insurance issues, including those concerning the effect and result of federal activity on the senior citizen health insurance marketplace and regulatory scheme. Review and monitor state and federal relations with respect to senior health care initiatives and other impacts on the states.
 - D. Monitor developments concerning State Health Insurance Assistance Programs (SHIPs), including information on legislation affecting the funding of SHIPs. Assist the states with issues relating to SHIPs and support a strong partnership between SHIPs and the CMS. Provide the perspective of state insurance regulators to federal officials, as appropriate, on issues concerning SHIPs.
 - E. Monitor, maintain, and review, in accordance with changes to Model #651, a record of state approvals of all Medicare supplement insurance new or innovative benefits for use by state insurance regulators and others. Review state-approved new or innovative benefits and consider whether to recommend that they be made part of standard benefit plan designs in Model #651.
 - F. Develop appropriate regulatory standards and revisions, as necessary, to the NAIC models, consumer guides, and training material on LTCI, including the study and evaluation of evolving LTCI product design, rating, suitability, and other related factors. Work with federal agencies, as appropriate.
 - G. Examine examples of health-related financial exploitation of seniors and work with other NAIC committees, task forces, and working groups on possible solutions.
 - H. Examine the effects of structural racism and the COVID-19 pandemic on access, affordability, and outcomes for older insurance consumers.

NAIC Support Staff: David Torian