

Draft: 5/18/22

Senior Issues (B) Task Force
Virtual Meeting
May 11, 2022

The Senior Issues (B) Task Force met May 11, 2022. The following Task Force members participated: Marlene Caride, Chair, represented by Chanell McDevitt; Jon Pike, Vice Chair (UT); Lori K. Wing-Heier represented by Mayumi Gabor (AK); Jim L. Ridling represented by William Rodgers (AL); Alan McClain represented by Jimmy Harris (AR); Ricardo Lara represented by Tyler McKinney (CA); Michael Conway represented by Peg Brown (CO); Andrew N. Mais represented by Paul Lombardo (CT); Trinidad Navarro represented by Susan Jennette (DE); David Altmaier represented by Chris Struk (FL); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Shannon Hohl (ID); Amy L. Beard represented by Mary Ann Williams (IN); 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 Rebecca Butler (MA); Kathleen A. Birrane represented by Fern Thomas (MD); Timothy N. Schott represented by Marti Hooper (ME); Anita G. Fox represented by Renee Campbell (MI); Grace Arnold represented by Julia Dreier (MN); Chlora Lindley-Myers represented by Cynthia Amann (MO); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Yuri Venjohn (ND); Eric Dunning represented by Laura Arp (NE); Barbara D. Richardson represented by Jack Childress (NV); Judith L. French represented by Laura Miller (OH); Glen Mulready (OK); Michael Humphreys represented by Michael Gurgiolo (PA); Larry D. Deiter represented by Lisa Harmon (SD); Carter Lawrence represented by Vickie Trice (TN); Cassie Brown represented by Rachel Bowden (TX); Scott A. White represented by Bob Grissom (VA); Michael S. Pieciak represented by Mary Block (VT); Mike Kreidler represented by Molly Nollette (WA); Nathan Houdek represented by Jennifer Stegall (WI); and Allan L. McVey represented by Samantha Chase (WV). Also participating were: Eric Anderson (IL); Chris Nicolopoulos (NH); Bogdanka Kurahovic (NM); Sarah Allen (NY); Patrick Smock (RI); Tomasz Serbinowski (UT); and Mavis Earnshaw (WY).

1. Discussed the CMS' Proposed Rule on Medicare Part B Enrollment

Commissioner Pike said the purpose of this Task Force meeting is to examine the proposed rule promulgated by the Centers for Medicare & Medicaid Services (CMS) to simplify Medicare enrollment rules and whether there is an impact on Medicare supplement and guaranteed issue (GI). Commissioner Pike asked William Schiffbauer (Schiffbauer Law Offices) to explain the summary he prepared and shared with the Task Force.

Mr. Schiffbauer said the proposed rule includes changes with respect to: 1) Part B enrollment simplification and new Special Enrollment Periods (SEPs); 2) extended Part B coverage limited to immunosuppressive drugs for certain end-stage renal disease (ESRD) beneficiaries; 3) simplification changes to Medicare enrollment forms; and 4) Medicaid state buy-in of Medicare premiums. He said of interest to Medigap carriers and beneficiaries are proposals relating to: 1) "simplifying" changes to Part B enrollment with respect to the effective dates for Part B entitlement; and 2) new Part B SEPs for "exceptional conditions."

Mr. Schiffbauer said the statutory amendments did not change the open enrollment and GI requirements applicable to Medigap health insurance. He said the SEPs in the proposed rule affect the Medigap GI provision and that current laws are maintained with respect to Medigap open enrollment. He said the proposed rule creates some uniformity for Medicare enrollment timing, making it bit more consistent, and that current federal and state laws remain in place and unaffected by the proposed rule.

Bonnie Burns (California Health Advocates—CHA) asked Mr. Schiffbauer if any those GI events under the new SEPs create a problem to access Medigap. Mr. Schiffbauer said no. He said the new SEPs in the proposed rule all are entries into Medicare, so once one is enrolled in Part B, it would trigger their Medigap open enrollment. He said all of the same GI provisions for Medigap remain the same. Ms. Burns asked if it is the case where a person who exercises an SEP and is 65 years of age or older is the only person who would have access to Medigap. Mr. Schiffbauer said that is dependent on state law, so if state law provides access to open enrollment or GI to those under 65, that state law remains in place, and this proposed rule does not change that. He said everything current regarding Medigap open enrollment and Medigap GI remains the same. He said this proposed rule would begin entitlement to Medicare Part B a little earlier as there has been for some a couple months delay depending on when the person signed up for their initial or general open enrollment for Medicare. He said the proposed rule moves the start date into a more uniform setting across the board.

Ms. Burns said that raises another issue because the time frame for a person to apply and to get Medigap is shortened and that can create a doughnut hole for benefits between the time a person is eligible for Medicare and when Medicare begins and the time the person is actually issued coverage under Medigap that has a different effective date. Mr. Schiffbauer said it is a matter of what evidence Medigap requires today to demonstrate that a person is enrolled in Medicare Part B, which remains the same, and so CMS will have to move faster in getting the enrollment cards or the evidence of enrollment to the beneficiaries within that time frame.

Ms. Burns said therein lies the problem as those cards come out of the Social Security Administration (SSA) and not CMS, and it is well-known the delay problem SSA is encountering with Medicare cards, so this could exacerbate the problem. She said she could envision greater problems for Medicare beneficiaries in proving that they are eligible for Medicare and in getting an effective date for Medigap that is going to coordinate with Medicare.

Mr. Schiffbauer said where CMS is seeking comments from the beneficiary community is on the new SEP and employer information and what is the burden on the beneficiary in getting the needed evidence from the employer to show that they are eligible to enroll in Medicare now. Ms. Burns said this is a place for the NAIC to weigh in and comment on behalf of consumers, as well as the timing issue for getting Medigap under this proposed rule.

Commissioner Pike asked Ms. Burns if SSA were able to address the Medicare enrollment card issue and found a way to get the cards out in a timely fashion, would this rule still be troublesome. Ms. Burns said the proof of eligibility is very important, and the gap that could occur between the time a person is eligible for Medicare and when Medicare begins and the time the person is actually issued coverage under Medigap is of concern. She said she is glad CMS has broad authority regarding the SEPs. Mr. Schiffbauer said CMS has the authority, which is statutory, and has said that if someone does not fall within the specific SEPs, then CMS will consider that person's circumstances on a case-by-case basis and that authority of CMS does not prevent CMS from coming up with other SEPs in the future.

Harry Ting (Health Consumer Advocate) said he is an NAIC consumer representative and State Health Insurance Assistance Program (SHIP) counselor. He said the overall changes in the proposed rule are excellent. He pointed out that the proposed rule would extend coverage for immunosuppressive drugs for people who had kidney transplants and were on ESRD coverage under Medicare for dialysis, which Medicare Part B only covers for 36 months; this new rule would extend coverage indefinitely.

Dr. Ting said there is one area of the proposed rule that he has concerns about, which Mr. Schiffbauer raised earlier, and that is where there is employer misrepresentation on providing information about enrolling in Medicare Part B. He said the proposed rule would create an SEP to allow an individual who can demonstrate that they were misinformed by their employer about enrolling in Medicare Part B, and he cited himself as an example

of being told to choose Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) coverage and to continue under his employer's plan. He said although it initially sounded reasonable when he did research, it was clear that COBRA was much more expensive than getting coverage under Medicare and then getting Medigap and a drug plan. He said most people do not know this or know how to research this, and they rely on the information their employer's human resources (HR) department provides. He said the problem with this SEP is that in order to qualify, the person has to demonstrate that their employer sent them information in writing that gave false or bad information, and that information influenced their delay in enrolling in Medicare Part B. He said most information and guidance from HR departments are verbal, as was in his case, and there would be no written misinformation to provide as evidence. He said the rule should allow for a person who is enrolled in COBRA to be allowed to get into this new SEP until their COBRA expires.

Commissioner Pike asked if any regulators have any questions especially as it may relate to state laws. Ms. Hohl said the proposed rule is a good starting point and perhaps taking a look at the *Coordination of Benefits Model Regulation (Model #120)* may not be a bad idea although that is not the issue currently. She said her concern is that there is no mention of SSA in the proposed rule and how SSA will implement this proposed rule. She said she has seen issues with Idaho SHIP offices and their difficulties to work with SSA, which is the gate keeper for Part B enrollment. She said the SHIP offices see problems where beneficiaries seek equitable relief, which is separate topic, but that there are great challenges in working with the SSA. She said often times CMS is not really involved in the conversation, and it is just the beneficiary and the SSA. She said if the Task Force decides to comment, it may want to consider ask CMS: 1) what guidance will be provided to SSA; 2) where does a beneficiary go if they cannot work with SSA; or 3) how to appeal a decision. She said SSA tends to have a lot of authority in these decisions.

Ms. Burns said she would ask and encourage the NAIC to comment on the proposed rule on behalf of beneficiaries and consumers.

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