

November 10, 2015

Hon. Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington DC 20201

Dear Secretary Burwell:

The National Association of Insurance Commissioners (NAIC) is sending this letter to request that the Department of Health and Human Services (HHS) resume its collection and dissemination to the states of Long Term Care (LTC) partnership data. It is our understanding that you may be receiving similar correspondence from America's Health Insurance Plans (AHIP) and the American Council of Life Insurers (ACLI) making the same request. As set forth in detail below, the collection of this data is important both to the state regulators and the insurers writing LTC insurance. HHS is in the unique position to assist in the proper administration of LTC partnership plans by resuming collection and dissemination of this data.

The Medicaid Partnership rules (42 U.S.C. 1396p(b)(1)(C) and (5)), which were enacted by the Deficit Reduction Act of 2005, PUB. L. NO. 109-171 (DRA), were designed to encourage individuals to purchase private LTC insurance policies that satisfy certain requirements (including consumer protection rules) and to reduce the burden on State Medicaid systems.

To date, 40 States have adopted Partnerships under the DRA through amendments to their State Medicaid plans. (Four additional States maintain "grandfathered" Partnerships, which operate somewhat differently.) The new Partnership programs created pursuant to the DRA, are very beneficial to individuals, since assets are disregarded on a dollar-for-dollar basis – with respect to the Medicaid asset eligibility test to reflect LTC insurance benefits received. Thus, individuals who purchase qualifying LTC policies and utilize their insurance benefits may then retain assets equal to those insurance benefits and still qualify for Medicaid, provided they meet all other Medicaid eligibility criteria. State Medicaid programs also benefit, since the presence of LTC insurance coverage delays, and in some cases prevents individuals' entry into Medicaid.

The DRA included a provision (Section 6021) requiring insurers participating in state LTC Partnership Programs with a Medicaid state plan amendment approved after May 14, 1993 to provide regular reports to the Secretary of the Department of Health and Human Services (HHS). Section 6021 contains the following requirement:

"The issuer of the [Partnership] policy provides regular reports to the Secretary, in accordance with regulations of the Secretary, that include notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships."

To allow State Medicaid Partnership programs to apply the Medicaid eligibility standards properly, final regulations promulgated by HHS require issuers of Medicaid Partnership LTC policies to report data about those policies (including insurance benefits paid) to HHS, and in turn HHS makes this data available to the States that have adopted Partnership programs. See 45 CFR 144.206; 73 FED. REG. 76960 (Dec. 18, 2008) (adopting final

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regulations with respect to these reporting requirements). These final regulations (45 CFR 144.206) lay out the general and specific data reporting requirements that issuers of qualifying LTC policies must satisfy. States use the data reported to help ascertain whether an individual is eligible for Medicaid. The data also is useful to States as they evaluate the effectiveness of their Medicaid Partnership programs.

In 2013, HHS stopped collecting the data required to be reported under its own final regulations. Although issuers of qualifying LTC policies are still maintaining the data required to be submitted to HHS under the regulations, HHS no longer provides a mechanism for collection of that data. Consequently, HHS no longer is disseminating that data to the States. This data is vitally important to the States; if they are unable to obtain this information they may not be able to administer their Medicaid programs properly. The data is necessary for the proper administration of the Medicaid laws governing "Medicaid Partnership" LTC insurance policies. We are concerned that continued disruption of the data reporting system previously used by HHS could result in improper denials of Medicaid coverage for individuals who are Medicaid eligible. Individuals may be substantially harmed due to this breakdown in the system.

Due to the database requirement under the DRA, new Partnership states did not have to incur significant additional data costs thus overcoming a substantial hurdle for implementing the Partnership. Elimination of the database changed the rules for the existing Partnership states and creates a barrier for new states to implement the program. The database also provides consumer protection so a Partnership policyholder doesn't slip thru the cracks in being able to use asset protection. The Medicaid eligibility process can go much faster and smoother with a verified asset protection source. Additionally, the database is one of the best ways for Reciprocity states to authenticate asset protection between states.

For these reasons, we respectfully ask that HHS resume the collection of data required under its final regulations as expeditiously as possible. We would be happy to meet with you or your designee at any time to discuss this issue. Please contact David Torian of the NAIC at dtorian@naic.org or 202-471-3979. Thank you for your consideration of this request.

Sincerely,

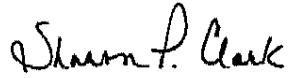


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