

SENIOR ISSUES (B) TASK FORCE

Senior Issues (B) Task Force April 6, 2019, Minutes

Senior Issues (B) Task Force March 7, 2019, Minutes (Attachment One)

Senior Issues (B) Task Force
Orlando, Florida
April 6, 2019

The Senior Issues (B) Task Force met in Orlando, FL, April 6, 2019. The following Task Force members participated: Lori K. Wing-Heier, Chair (AK); Marlene Caride, Vice Chair (NJ); Jim L. Ridling represented by Steven Ostlund (AL); Allen W. Kerr represented by William Lacy (AR); Ricardo Lara represented by Perry Kupferman (CA); Michael Conway (CO); Andrew N. Mais represented by Paul Lombardo (CT); Stephen C. Taylor represented by Howard Liebers (DC); Trinidad Navarro represented by Fleur McKendell (DE); David Altmaier represented by Chris Struk (FL); Jim Beck (GA); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Elaine Mellon (ID); Robert H. Muriel represented by Jennifer Reif (IL); Stephen W. Robertson represented by Karl Knable (IN); Vicki Schmidt represented by Julie Holmes (KS); Nancy G. Atkins represented by John Melvin (KY); James J. Donelon represented by Ron Henderson (LA); Gary Anderson represented by Christopher Joyce (MA); Al Redmer Jr. represented by Paula Keen (MD); Eric A. Cioppa represented by Marti Hooper (ME); Anita G. Fox represented by Kevin Dyke (MI); Steve Kelley represented by Martin Fleishhacker (MN); Chlora Lindley-Myers (MO); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Chrystal Bartuska (ND); Bruce R. Range represented by Martin Swanson (NE); John G. Franchini represented by Paige Duhamel (NM); Barbara D. Richardson represented by Dave Cassetty (NV); Jillian Froment represented by Laura Miller (OH); Glen Mulready represented by Andy Schallhorn (OK); Andrew Stolfi represented by Tashia Sizemore (OR); Jessica Altman (PA); Larry Deiter represented by Jill Kruger (SD); Julie Mix McPeak represented by Brian Hoffmeister (TN); Kent Sullivan represented by Raja Malkani (TX); Todd E. Kiser represented by Nancy Askerlund (UT); Scott A. White represented by Julie Blauvelt (VA); and Mike Kreidler represented by Molly Nollette (WA).

1. Delayed the Discussion of Life Expectancy and Retirement Products

Director Wing-Heier said this topic will be discussed at the Summer National Meeting.

2. Discussed DNA Swabbing/Genetic Information Collection

Mr. Swanson said there is a proliferation of companies and entities that are doing DNA swabs of residents in nursing homes, senior facilities and other venues, while claiming that Medicare will cover 100% of the cost of the test. He said most insurance providers are happy to pay several thousand dollars on a test that will potentially save them hundreds of thousands of dollars per policyholder by informing them of their risks. He said Medicare covers such tests for genetic propensity for cancer.

However, Mr. Swanson said these swabs and tests go beyond testing for cancer risk, noting that other states are encountering similar practices, such as California, Kansas, New Jersey and Texas. He said Nebraska's Seniors' Health Insurance Information Program (SHIIP) became aware of several reports of entities going into nursing homes, assisted living facilities and senior centers to "swab" individuals purportedly to look for genetic markers for cancer. He said the Nebraska Department of Insurance looked further into the reports and discovered that the practice had proliferated around Nebraska and other states.

Mr. Swanson said that while genetic testing is allowed in certain circumstances by Medicare, it is unclear if those limitations are being followed by these entities. He said Nebraska's investigation revealed that multiple swabbings would occur at the facilities, and submissions for payment to Medicare and Medicare Advantage insurers would occur. The cost of each swab can range from approximately \$1,300 to as high as \$10,000.

Mr. Swanson said further investigations revealed that some individuals may be billed if Medicare or the advantage plan does not pay for the testing. He said the method of how consent to test is obtained and it is unclear what is done with the genetic material after the test is completed. He also said it is unclear what happens to the DNA results and the genetic information gathered, including where it is stored and how it may be used.

Director Wing-Heier asked if any of the insurers present or any of the Task Force members have heard or experienced this or have any additional information to share.

Commissioner Caride said the New Jersey Department of Banking and Insurance has a watch group investigating these practices and has notified the New Jersey department of health.

Ms. Nollette said Washington state is not aware of any such cases but is aware of a related in-network case.

Director Wing-Heier asked Mr. Swanson if the consumer gets anything back from their DNA/genetic results or just a bill. Mr. Swanson said it is unclear.

Commissioner Altman asked Mr. Swanson if these matters have been referred to the federal Centers for Medicare & Medicaid Services (CMS), because they have a robust review. Mr. Swanson said they have been.

Ms. Holmes said Kansas is aware of one complaint, which was referred to the U.S. Department of Health and Human Services (HHS).

Bonnie Burns (California Health Advocates—CHA) said it is important that insurance agents are made aware of these practices, noting that this issue is another example of scams that consistently come up to defraud Medicare. She said these scammers are targeting senior centers along with nursing homes.

Silvia Yee (Disability Rights Education and Defense Fund—DREDF) said this issue targets more than the individual, but also the family and generations down the line. She said when seniors are targeted, they will naturally inform their children and grandchildren, who may act on their health and insurance needs based on the act of the targeted senior.

Marcy Buckner (National Association of Health Underwriters—NAHU) said the NAHU is aware of these scams, has been educating and speaking with their agents, and has a working group looking into this matter.

Director Wing-Heier said that while there is a place for such genetic/DNA testing, there must be a reason for it; and targeting and taking advantage of seniors is unacceptable. She said the Task Force will investigate what the NAIC can do about it.

Commissioner Conway asked Mr. Swanson if this issue has been brought to the attention of Nebraska's attorney general. Mr. Swanson said it has been. Mr. Hamby asked if there is evidence of complicity by the facilities where these scams occur. Mr. Swanson said the vast majority of facilities are unaware; however, there is evidence of one or two that have been complicit, but generally the majority are not.

3. Heard from the NAHU About MACRA Changes

Director Wing-Heier asked Ms. Buckner and Jessica Waltman (Forward Health Consulting) to inform the Task Force about the NAHU's work on educating agents on the changes to Medicare supplement (Medigap) insurance as a result of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA).

Ms. Waltman said the NAHU represents approximately 100,000 licensed agents and brokers nationwide, including thousands of members who focus their practice on the private Medicare marketplace. She said the NAHU provides professional education to its members so they can advise their clients in an accurate and timely manner about relevant public policy changes and related marketplace developments. She said the NAHU ensures that all its members who work with Medicare beneficiaries know how MACRA will affect the program beginning Jan. 1, 2020.

Ms. Waltman said the NAHU provides valuable information to as many members as possible and utilizes a multi-prong strategy for all communications, designed to provide educational content and product and compliance information. She said NAHU members respond best to content presented in a wide range of formats, so that methodology has been used to provide them with information about how MACRA will affect the Medigap market. She said topics routinely addressed include new Medicare identification cards for beneficiaries, upcoming changes to the eligibility rules, and who will and will not be considered newly eligible.

Ms. Waltman said the NAHU covers how limits to first-dollar coverage and changes to guaranteed issue requirements will affect newly eligible beneficiaries, as well as how changes to eligibility will affect marketing of existing plans and the new Plan G. She said the NAHU also educates members about how MACRA has changed payments to Medicare providers and other facets of the law, like its impact on individuals who are in the hospital on observation status compared to those in inpatient status.

Ms. Waltman said the NAHU has provided, and continues to provide, information about these changes through its quarterly newsletter that covers topics specific to Medicare, monthly member magazine, monthly compliance webinars, weekly podcast and continuous updates on its website. She said the NAHU also includes information about MACRA changes in presentation materials used by national leaders and staff, and has offered an educational session that addresses this topic at its annual conference for the past five years, the most recent of which was held just six weeks ago and was attended by almost 1,000 agents and brokers.

Ms. Waltman said the NAHU has been hosting targeted Medicare Summits for groups of producers all over the U.S. She said, during 2018, the NAHU hosted 22 summits and, in 2019, 30 summits are scheduled with four more in the planning stages. She said most summits attract producers from both the host state and neighboring states, and MACRA changes are part of the core curriculum of every summit.

Ms. Waltman said NAHU's members face several challenges with providing this information to beneficiaries. She said one problem its members report concerning MACRA is the need for the states to take timely action to adopt the changes necessary to implement MACRA requirements. She said as the states move forward with their implementation procedures, more information tends to flow to the producer community, which they can then pass on to beneficiaries in that state. Additionally, she said, once state insurance regulators approve plan offerings for 2020 and health insurance carriers publish rate information and related supplementary materials for producers, the NAHU will be able to intensify its efforts to educate the agent community.

Ms. Waltman said another challenge NAHU members face is the lack of information and, in some cases, misinformation in distribution about the impact of MACRA. She said the frustration this has caused among NAHU members is one of many reasons for the increase in education the NAHU has provided to its members who are active in the Medicare market. She said the NAHU recognizes an increased desire for the accurate dissemination of information to provide appropriate guidance for Medicare beneficiaries, noting that the NAHU is looking to the states to disseminate implementation procedures to best educate its members and the consumers they serve.

Director Wing-Heier encouraged the states to make the necessary MACRA changes to their laws and/or regulations so that providers can educate themselves and help their consumers. She asked if there is information about MACRA on the NAHU website. Ms. Buckner said there is, both on the NAHU website and on a webpage dedicated to MACRA.

Ms. Seip asked if the NAHU talks with agents and producers about consumers being told that rates will go up, given that Plan C and Plan F are not available to the "newly eligible" and the death spiral that will occur. Ms. Waltman said the NAHU focuses on the law and how it affects the two groups of consumers, and the agents do their best to provide the best possible recommendations to the consumers.

Ms. Mellon said quite a few complaints have been heard regarding stories about Plan F going away, that consumers must change plans or that rates are going up because of MACRA. She said—after issuing bulletins, notices, warnings and other resources—complaints have been nearly nonexistent.

Director Wing-Heier reminded the Task Force that it developed two bulletins—one for consumers and one for producers—that the states are free to use and edit to their individual state needs.

Ms. Sizemore asked if the NAHU will work with the state insurance departments to help them and the state shut down these false and misleading claims. Ms. Buckner said the NAHU would be happy to help, noting that most of the attendees at the NAHU summits are not NAHU members, so they can connect with persons outside of the NAHU.

Heather Jerbi (America's Health Insurance Plans—AHIP) said it is important for the states to complete their implementations, requesting that the states complete them by June 1, 2019. Although neither federal law nor the *Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act* (#651) require the states to adopt MACRA changes via relevant legislation and/or regulation by no later than June 1, 2019, she said it would be of great help to insurers to have states complete the legislative and/or regulatory changes to their Medigap laws as quickly as possible.

4. Heard a Federal Legislative Update and MACRA Update

David Torian (NAIC) reminded the Task Force that funding for the State Health Insurance Assistance Program (SHIP) was fully funded for fiscal year 2019 at \$49,115,000. He said the president's fiscal year 2020 budget cuts SHIP funding by \$13,000,000 from the fiscal year 2019 funding. He said, historically and generally, the U.S. Congress does not act on the president's budget and instead drafts its own budget and appropriation funding; therefore, the focus for fiscal year 2020 funding will be on the House Committee on Appropriations and the Senate Committee on Appropriations.

Mr. Torian said the NAIC will continue to strongly support SHIP funding and urge Congress to pass full funding for this vital and important program. He also informed the Task Force of a Medigap bill that was introduced in Congress about five weeks ago that references the NAIC. He said the bill, HR 1394, Medigap Consumer Protection Act of 2019, was introduced by U.S. Rep. Lloyd Doggett (D-TX), chairman of the House Ways and Means Committee's Subcommittee on Health, and it asks the NAIC to review and "improve" the medical loss ratio (MLR) requirements for group and individual policies, review and develop new premium pricing standards, and prohibit the sale of policies that discriminate based on age. He said the bill also repeals the MACRA changes and restores prior law. Mr. Torian said the likelihood of passage of this bill is low.

Mr. Torian said of the 50 states and the District of Columbia, 43 have either enacted the required changes to their Medigap laws or regulations or are near enactment. He said the states are encouraged to complete their implementation processes as quickly as possible so the necessary mechanisms, such as outlines of coverage, can be disclosed to consumers. He reminded the states that federal law requires the states to adopt standards that are equal to or more stringent than Model #651, and failure to adopt the MACRA amendments prior to Jan. 1, 2020, could cause states to lose their regulatory authority over the provisions of the MACRA amendments.

Mr. Torian said the Task Force has produced two bulletins about MACRA, and the states and other parties are free to use these bulletins to educate their respective constituencies. He said the Task Force will investigate developing a marketing and sales bulletin for the states to use.

5. Heard a Discussion about Medicare and COBRA

Ms. Burns and Harry Ting (Consumer Advocate Volunteer, Chester County Department of Aging Services – Apprise Program) said the Task Force should be made aware of a complicated topic that is hard to summarize and generalize without leaving out important technical information. Ms. Burns said it is a topic of growing importance as more people work past their 65th birthday.

Ms. Burns said the U.S. Bureau of Labor Statistics (BLS) notes that the number of people working past age 65 today is the highest it has been in 55 years. She said the BLS projects that 36% of people between the ages of 65 and 69 will be in the labor force by 2024. As a result, a significant number of people are likely to experience being eligible for the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and Medicare at the same time in the future.

Ms. Burns said federal health benefit payment rules that apply while someone 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. She highlighted a recent case. She said one of her clients asked for help with a bill for \$120,000 from a COBRA carrier. She said the client had stopped working and taken COBRA but had not signed up for Medicare when she was eligible to do so, nor when she signed up for COBRA.

Ms. Burns said, as a result, the COBRA carrier had paid for her client's covered health care expenses until a company audit revealed that she had been eligible for Medicare before she took out COBRA. She said the COBRA carrier was billing the client for expenses that should have been billed to Medicare. She said this is not the first client the CHA has seen with a recoupment notice from a COBRA carrier, but it is the largest amount the CHA has seen.

Ms. Burns introduced Mr. Ting to the Task Force as a new NAIC consumer representative from Pennsylvania. Mr. Ting told the Task Force about his experience with his former employer, as well as with COBRA and Medicare, noting that had he not investigated further, he could have been caught in the problem that many other consumers find themselves in.

Mr. Ting said if one signs up for COBRA and that person is eligible for Medicare at the same time, the COBRA benefits are intended to be paid after Medicare pays, even if the person has not actually signed up for Medicare. He also said that when one does sign up for Medicare later, the person could be subject to premium penalties for late enrollment, and a COBRA carrier may be able to bill that person for any benefits paid by mistake when Medicare should have paid first.

Ms. Burns suggested that a letter from the NAIC to the U.S. Department of Labor (DOL) and CMS pointing out this problem could be helpful.

Director Wing-Heier asked the Task Force if anyone had any objection to having a letter drafted. No objections were heard. She asked Mr. Torian to begin drafting a letter.

6. Adopted its March 7, 2019, and 2018 Fall National Meeting Minutes

The Task Force met March 7, 2019 and took the following action: 1) discussed its agenda for 2019; 2) disbanded the Short Duration Long-Term Care Policies (B) Subgroup and the Long-Term Care Shopper's Guide (B) Working Group; and 3) discussed MACRA.

Mr. Ostlund made a motion, seconded by Commissioner Altman, to adopt the Task Force's March 7, 2019 (Attachment One) and Nov. 15, 2018 (*see NAIC Proceedings – Fall 2018, Senior Issues (B) Task Force*) minutes. The motion passed.

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

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Draft: 3/12/19

Senior Issues (B) Task Force
Conference Call
March 7, 2019

The Senior Issues (B) Task Force met via conference call March 7, 2018. The following Task Force members participated: Lori K. Wing-Heier, Chair (AK); Marlene Caride, Vice Chair (NJ); Jim L. Ridling represented by Steven Ostlund (AL); Ricardo Lara represented by Tyler McKinney (CA); Michael Conway represented by Peg Brown (CO); Stephen C. Taylor represented by Howard Liebers (DC); David Altmaier (FL); Colin M. Hayashida represented by Martha Im (HI); Doug Ommen represented by Cynthia Banks Radke (IA); Dean L. Cameron represented by Kathy McGill (ID); Kevin Fry represented by Eric Anderson (IL); Stephen W. Robertson represented by Karl Knable (IN); Vicki Schmidt represented by Julie Holmes (KS); Nancy G. Atkins represented by Stephanie McGaughey-Bowker (KY); James J. Donelon represented by Ron Henderson (LA); Gary Anderson represented by Mary Hosford (MA); Al Redmer Jr. represented by Joy Hatchette (MD); Eric A. Cioppa represented by Sherry Ingalls (ME); Anita G. Fox represented by Renee Campbell (MI); Steve Kelley represented by Fred Andersen (MN); Chlora Lindley-Myers represented by Mary Mealer (MO); Mike Chaney represented by Bob Williams (MS); Mike Causey represented by Ted Hamby (NC); Jon Godfread represented by Chrystal Bartuska (ND); Bruce R. Ramge represented by Martin Swanson (NE); John G. Franchini represented by Anna Krylova (NM); Barbara D. Richardson represented by Jack Childress (NV); Jillian Froment represented by Tynesia Dorsey (OH); Glen Mulready represented by Andrew Schallhorn (OK); Jessica Altman (PA); Larry Deiter represented by Jill Kruger (SD); Julie Mix McPeak represented by Brian Hoffmeister (TN); Kent Sullivan represented by Philip Reyna (TX); Scott A. White represented by Bob Grissom (VA); Mike Kreidler represented by Michael Bryant (WA); Mark Afable represented by Jennifer Stegall (WI); James A. Dodrill represented by Dena Wildman (WV) and Tom Glause represented by Peter Greff (WY). Also participating were: Tolanda Coker (AZ); Pam Koenig (MT); and Martin Wojcik (NY).

1. Discussed its Plans for 2019

Director Wing-Heier said one of the items she would like the Task Force to examine is life expectancy and the products in use for retirement. She said retirement is no longer at age 62 or 65. She also said there should be a “deeper dive” into these products, including how to educate young adults about retirement and the products that exist, as well as how to communicate the need for young adults to plan for their retirement. Mr. Williams agreed with Director Wing-Heier, noting that more education for those in their 20s is needed and necessary.

Director Wing-Heier said the Task Force should look into long-term care insurance (LTCI). She said the Task Force should examine how LTCI is and can be used, and how to better communicate the use of LTCI products. She said much of the discussion regarding LTCI revolves around solvency, and solvency tends to overshadow any discussion about the utilization of LTCI products.

Ms. Mealer said the current review and update of the NAIC’s *Life Insurance Buyer’s Guide* is examining ways to discuss how to finance different needs at different stages in one’s life and how life insurance, including life insurance that includes LTCI riders, are utilized. Director Wing-Heier and Mr. Knable both agreed that this is an area to examine.

Director Wing-Heier asked the Task Force if there are any other topics to be discussed.

Bonnie Burns (California Health Advocates—CHA) said it is important to not just think of LTCI in terms of physical impairment but also mental or cognitive impairment, noting that the need for care and assistance should be included in the discussion, as well. She said there is a need to speak about mental or cognitive impairment and the types of care, the costs, the financing and the use of resources.

Mr. Swanson said the Task Force should be made aware of the proliferation of companies and entities that are doing DNA swabs of residents in nursing homes, senior facilities and other venues, while claiming that Medicare will cover 100% of the cost of the test. Also, most insurance providers are happy to pay several thousand dollars on a test that will potentially save them hundreds of thousands of dollars per policyholder by informing them of their risks. He said Medicare covers such tests for genetic propensity for cancer. However, these swabs and tests go beyond cancer, and he is aware of other states encountering similar practices, such as California, Kansas and New Jersey.

Director Wing-Heier asked Mr. Swanson if he would raise this issue at the Spring National Meeting. She said she has serious concerns about these practices and asked where this genetic data goes, how is it used and what impact it has on filings. Mr. Swanson said he is aware of one case where the lab retains the data.

Director Wing-Heier asked why Medicare would pay for these tests and if it is aware of these practices. She said this issue should be on the agenda for the Spring National Meeting, and she asked for the Centers for Medicare and Medicaid Services (CMS) and the industry to address this matter.

2. Disbanded the Short Duration Long-Term Care Policies (B) Subgroup

Director Wing-Heier asked for a motion to disband the Subgroup, as it has completed its designated charge. Commissioner Caride made a motion, seconded by Mr. Ostlund, to disband the Short Duration Long-Term Care Policies (B) Subgroup. The motion passed.

3. Disbanded the Long-Term Care Shopper's Guide (B) Working Group

Director Wing-Heier asked for a motion to disband the Working Group, as it has completed its designated charge. Mr. Reyna made a motion, seconded by Commissioner Caride, to disband the Long-Term Care Shopper's Guide (B) Working Group. The motion passed.

4. Discussed MACRA

Director Wing-Heier asked David Torian (NAIC) to provide an update on the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA).

Mr. Torian reminded the Task Force of the survey recently sent to the states asking them where they are in their implementation process of the MACRA provisions. He said he would provide the results at the Spring National Meeting. He also reminded the Task Force that the 2019 edition of the MACRA frequently asked questions (FAQ) document was approved and posted last month, and he encouraged all parties to refer to the FAQ document to gain a better understanding of the MACRA provisions and changes.

Mr. Torian told the Task Force that the NAIC developed two bulletins to alert parties to be mindful of the misinformation that has been promulgated about the MACRA changes. He said one bulletin is a consumer alert to inform and educate consumers about the facts of MACRA and to counter the misconceptions and misrepresentations that some are promoting. He said the second bulletin is an agent/producer alert to educate agents and producers about MACRA and to remind them that misleading information may be subject to state administrative actions.

Mr. Ostlund asked about the sentence in the agent/producer alert regarding state enforcement. Mr. Torian explained that either bulletin can be used by the states as they see fit, and the option for a state to act is not only up to the individual state but also subject to that state's own laws and rules.

Mr. Hamby asked if the language could be altered from the word "can" to "may." Mr. Torian said the states are free to use the bulletins as they see fit and can edit and alter them to fit their specific state's needs or style.

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

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