

Draft: 7/24/24

Senior Issues (B) Task Force
Virtual Meeting
July 18, 2024

The Senior Issues (B) Task Force met July 18, 2024. The following Task Force members participated: Scott Kipper represented by Jack Childress, Chair (NV); Peni Itula Sapini Teo, Vice Chair (AS); Lori K. Wing-Heier represented by Sarah Bailey (AK); Mark Fowler (AL); Ricardo Lara represented by Emily Smith (CA); Karima M. Woods represented by Stephen Flick (DC); Trinidad Navarro (DE); Michael Yaworsky represented by Anoush Brangaccio (FL); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Shannon Hohl (ID); Vicki Schmidt represented by Craig VanAalst (KS); Sharon P. Clark (KY); Timothy J. Temple represented by Vicki Dufrene (LA); Kevin P. Beagan (MA); Joy Y. Hatchette represented by Jamie Sexton (MD); Timothy N. Schott (ME); Anita G. Fox represented by Renee Campbell (MI); Grace Arnold represented by Cam Jenkins (MN); Chlora Lindley-Myers represented by Amy Hoyt (MO); Mike Chaney represented by Bob Williams (MS); Mike Causey represented by Robert Croom (NC); Jon Godfread represented by Chrystal Bartuska (ND); Eric Dunning represented by Martin Swanson (NE); D.J. Bettencourt represented by Maureen Belanger (NH); Alice T. Kane represented by Viara Ianakieva (NM); Judith L. French represented by Tynesia Dorsey (OH); Glen Mulready represented by Mike Rhoads (OK); Michael Humphreys represented by Shannen Logue (PA); Cassie Brown represented by Rachel Bowden (TX); Jon Pike represented by Tomasz Serbinowski (UT); Scott A. White represented by Julie Blauvelt (VA); Kevin Gaffney represented by Mary Block (VT); Mike Kreidler (WA); Nathan Houdek represented by Jennifer Stegall (WI); and Allan L. McVey represented by Joylynn Fix (WV).

1. Discussed the Medigap GI and Provider Withdrawals from Medicare Advantage Plans

Commissioner Teo, at the request of Commissioner Kipper, chaired this meeting. Swanson said a major hospital in Nebraska decided not to retain Medicare Advantage plans and got rid of their contracts. He said the hospital thought the Nebraska Department of Insurance (DOI) would have a say in getting people back onto original Medicare plans. He said the DOI did not think it could do that, but after speaking with the federal Centers for Medicare & Medicaid Services (CMS), it was verified they could do that. He said it was up to CMS to decide whether a special enrollment period (SEP) would be triggered under the scenario of a contract being severed.

Swanson said there is no resolution yet but that the heart of the issue is how CMS determines that an SEP is triggered under the new guidance recently issued and the enrollee can return to original Medicare. He said he believes that would also include Medigap but asked what the process that CMS engages in is and what happens in the meantime.

Swanson asked if other states' hospitals have decided they are no longer going forward with Medicare Advantage plans and, if so, what their experiences have been. He said he believes it comes down to a time and distance standard and how many Medicare Advantage plans are available within that.

Bartuska said she has heard of certain hospitals in her state also not taking a particular carrier's Medicare Advantage plans, which is related to an issue North Dakota has seen where a carrier withdrew their Medicare cost plan. Then, consumers were not allowed to go into other plans as a result of qualifying for a guaranteed issue (GI) open enrollment scenario when a carrier pulls out of a certain county. She said the issue of when an insurer has to discontinue a certain product because it is too populated in a certain area under federal guidelines should fall on the federal government to determine if these scenarios qualify for not only an open enrollment situation but, more importantly, a GI situation.

Rhoads asked Swanson if he could go over CMS' explanation again. Swanson said the process is that the hospital notified CMS, as did the carrier. He said CMS gave the proper email box for the information from the hospital to go to; however, the hospital has not heard back yet on a resolution. He said the CMS representative for the area and the company is aware of it and is working with the folks back in DC about whether an SEP under the new guidance is warranted to get these enrollees back into original Medicare.

Bartuska said they reached out to their CMS contact, and he told them to email them every time this situation or

federal funds. He said it would apply to all accepted benefit plans (such as Medigap plans) if any part of a company received federal funds.

Webb said the NAIC took issue with the underlying idea that all funds are just fungible. He said if you are receiving federal funds for an Affordable Care Act (ACA) plan or a Medicare Advantage plan,

Swanson said states are on their own at the moment. He said they do not have guidance from the OCR, and there is litigation that will throw a little bit of wrinkle into this. He said he would imagine the plans will publish their plan documents depending on how this goes,