

The Council for Affordable Health Insurance



September 17, 2010

Mary Beth Senkewicz
Chair, NAIC Senior Issues Task Force
Florida Office of Insurance Regulation
Edwin Larson Bld.
200 E. Gains St., Ste. 312
Tallahassee, FL 32399

Guenther Ruch
Vice Chair, NAIC Senior Issues Task Force
Wisconsin Office of the Commissioner of Insurance
125 South Webster Street
Madison, Wisconsin 53703-3474

RE: NAIC Senior Issues Task Force Consideration of the Medicare Supplement Part A Deductible Waiver Program

Dear Ms. Senkewicz and Mr. Ruch:

We appreciate the opportunity to further comment on the NAIC Senior Issues Task Force (SITF) draft Bulletin (dated July 12, 2010) and State Alert (dated Aug. 10, 2010) regarding Medicare Supplement Hospital Network Arrangements. As you may recall, we offered extensive comments on an earlier version of the draft State Alert in our letter to you of April 19, 2010. (See attached.) We incorporate those comments by reference in this letter in response to the latest version of the State Alert.

The Council for Affordable Health Insurance (CAHI) is a national research and advocacy organization devoted to market-based health care reforms that preserve freedom of choice for individuals and encourage a competitive health insurance market. CAHI members include health insurers, physicians, actuaries, agents and small business owners. Our member companies are active in the Medicare supplemental ("Medicare Supplement"), individual, small group, health savings account and senior markets.

Our members believe that the Medicare supplemental Part A deductible waiver program offers a welcome opportunity for carriers to capture significant Part A claims costs savings, which are passed along to plan enrollees. We understand that the SITF continues to express reservations about these contractual arrangements.

Our concerns below focus on the draft Bulletin posted on the NAIC's website following the NAIC meeting in Seattle. The draft Bulletin, essentially a template to potentially be used by state regulators, is

addressed to Medigap carriers writing coverage within a particular state. The draft Bulletin indicates that carriers who are participating in Part A deductible waiver programs, regardless of the specific aspects or terms of those programs, are doing so “without proper review or approval of state insurance regulators.” It then directs states to insert their own state citation to the NAIC Medigap Model Regulation (“Model Regulation”).

This raises a core question for our members regarding the substance of the draft Bulletin. Namely, what specific provisions within the Model Regulation would necessitate a specific “review or approval” by state regulators? The draft Bulletin does not appear to address this central question. Moreover, the primary -- if not the only -- legal concern raised by the SITF in its August 5, 2009 request for a legal opinion on these arrangements from the Centers for Medicare and Medicaid (CMS) was the assertion that they “do not meet the requirements of Medigap standardization” under federal law. As you know, these are the same standardization provisions that have been incorporated into the Model Regulation. But CMS Acting Administrator Charlene Frizzera specifically rejected this assertion in her written response, finding that “this particular network arrangement does *not* violate the standardization provisions” under federal law, nor -- we would add -- the Model Regulation. (Emphasis added.)

The only other specific reference to the Model Regulation, or, for that matter, any other specific legal basis necessitating state regulator review or approval of the arrangements in question comes near the end of the draft Bulletin in a reference to Section 6A of the Model Regulation.

Section 6A states in pertinent part that “no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.”

Once again, as CMS noted in their response, since the Part A deductible waiver programs in no way limit or exclude the Medicare supplement coverage offered to enrollees, they violate neither federal law nor Model Regulation prohibitions on “limitations or exclusions on coverage that are more restrictive than those of Medicare.” See Section 6A of the Model Regulation.

The fact remains that there is nothing in the draft Bulletin or, for that matter, the accompanying draft State Alert, which provides a credible basis for concluding that specific federal *or* state laws have been violated by the Part A deductible arrangements at issue. As you have accurately noted in the draft Bulletin, states can and do apply their own laws in connection with their oversight of Medigap policies issued in their states. But by definition, those laws can and do vary significantly from state to state, and are therefore the subject of interpretation and enforcement by appropriate state regulators, not the NAIC. One need look no further for evidence of this fact than the state of Florida, which expressly authorizes the very arrangements the SITF now calls into question. The Florida legislature passed and Governor Crist signed legislation earlier this year codifying the right of Medicare supplement insurers to grant premium credits to insureds for using an in-network inpatient facility. See Ch. 2010-175, Committee Substitute for Senate Bill No. 2176.

We do not know what other states may have laws or rules authorizing Part A Waiver programs elsewhere. But we do know that these arrangements – regardless of where they occur -- have been found by CMS to be legal under federal law, with the reasonable inference that they are also fully sanctioned under the provisions of the Model Regulation.

In light of the above, we would urge you to take into account the legal issues we have raised in this letter regarding the draft Bulletin and the comments in our April 19, 2010 letter with respect to the draft State Alert, and to reconsider whether it is necessary or appropriate to issue these documents.

We would appreciate it if you would post both these comment letters on the NAIC web site.

We greatly appreciate the opportunity to provide input on an issue of significant importance to our members. Please do not hesitate to contact me if you have questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin Wrege". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kevin S. Wrege, Esq.

