

REGULATORY FRAMEWORK (B) TASK FORCE

Regulatory Framework (B) Task Force April 6, 2019, Minutes

Regulatory Framework (B) Task Force Feb. 26, 2019, Minutes (Attachment One)

Pharmacy Benefit Manager Regulatory Issues (B) Subgroup March 22, 2019, Minutes (Attachment Two)

Request for NAIC Model Law Development (Attachment Three)

ERISA (B) Working Group April 6, 2019, Minutes (Attachment Four)

Draft Pending Adoption

Draft: 4/12/19

Regulatory Framework (B) Task Force
Orlando, Florida
April 6, 2019

The Regulatory Framework (B) Task Force met in Orlando, FL, April 6, 2019. The following Task Force members participated: Michael Conway, Chair (CO); Scott A. White, Vice Chair (VA); Lori K. Wing-Heier represented by Sarah Bailey (AK); Jim L. Ridling represented by Steven Ostlund (AL); Allen W. Kerr represented by Mel Anderson (AR); Ricardo Lara represented by Tyler McKinney (CA); Stephen C. Taylor represented by Howard Liebers (DC); David Altmaier represented by Chris Struk and Craig Wright (FL); Doug Ommen represented by Andria Seip (IA); Vicki Schmidt represented by Julie Holmes (KS); Nancy G. Atkins represented by John Melvin (KY); Gary Anderson represented by Matthew Veno (MA); Al Redmer Jr. (MD); Eric A. Cioppa represented by Robert Wake (ME); Steve Kelley represented by Kristi Bohn and Peter Brickwedde (MN); Chlora Lindley-Myers represented by Angela Nelson (MO); Mike Chaney represented by Bob Williams (MS); Mike Causey represented by Ted Hamby (NC); Jon Godfread (ND); Bruce R. Ramage represented by Martin Swanson and Laura Arp (NE); John G. Franchini represented by Paige Duhamel (NM); Glen Mulready represented by Buddy Combs (OK); Andrew Stolfi represented by TK Keen (OR); Jessica Altman (PA); Raymond G. Farmer represented by Lee Hill (SC); Larry Deiter represented by Jill Kruger (SD); Todd E. Kiser represented by Tanji Northrup (UT); Mike Kreidler represented by Molly Nollette (WA); and Mark Afafe represented by Nathan Houdek, Richard Wicka and Jennifer Stegall (WI). Also participating were: Marilyn Bartlett (MT); Laura Miller (OH); and Michael Humphreys and Brian Hoffmeister (TN).

1. Adopted its Feb. 26, 2019, and 2018 Fall National Meeting Minutes

The Task Force met Feb. 26, 2019, and Nov. 15, 2018. During its Feb. 26, 2019, meeting, the Task Force discussed its 2019 proposed activities, as well as its subgroup and working group's 2019 proposed activities.

Mr. Ostlund made a motion, seconded by Commissioner White, to adopt the Task Force's Feb. 26, 2019 (Attachment One) and Nov. 15, 2018 (*see NAIC Proceedings – Fall 2018, Regulatory Framework (B) Task Force*) minutes. The motion passed unanimously.

2. Adopted the Report of the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup and its Request for NAIC Model Law Development

Mr. Keen said the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup met March 22. During this meeting, the Subgroup discussed and adopted a Request for NAIC Model Law Development to develop a new model establishing a registration or licensing process for pharmacy benefit managers (PBMs). He said, assuming the Task Force adopts the Request for NAIC Model Law Development during this meeting and the Health Insurance and Managed Care (B) Committee adopts it during its April 7 meeting, the Subgroup plans to quickly move forward with its work to develop the new model. He said the Subgroup plans to review and discuss various PBM state laws to determine a framework for the new model. He encouraged stakeholders to submit information and suggestions to the Subgroup on what provisions to include in the new model for the Subgroup to discuss and consider as it begins its discussions.

Mr. Keen made a motion, seconded by Ms. Seip, to adopt the report of the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup, including its March 22 minutes (Attachment Two) and its Request for NAIC Model Law Development (Attachment Three). The motion passed unanimously.

3. Adopted its Subgroup and Working Group Reports

Mr. Wake made a motion, seconded by Commissioner White, to adopt the following reports: Accident and Sickness Insurance Minimum Standards (B) Subgroup; HMO Issues (B) Subgroup; and ERISA (B) Working Group (Attachment Four). The motion passed unanimously.

4. Heard a Presentation on the Use of Transparent Pricing/Contracting to Address Costs in the State of Montana Benefit Plan

Ms. Bartlett discussed how Montana has used transparent pricing/contracting to address costs in the State of Montana Benefit Plan (State Plan). She identified the driving forces leading to her work to address the State Plan's financial condition, which included the deteriorating finances, including its reserves, of the State Plan and legislation enacted by the Montana Legislature.

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Ms. Bartlett said her first step was to understand which health care services were driving the costs. She said she discovered the largest cost driver was hospital in-patient facility costs. Given this, she began her work there to begin to control health care spending. She found that price, not utilization, was the problem. She explained that she looked at the different payment models and selected Medicare as the reference point in determining the appropriate price Montana should pay per inpatient stay. She described how she designed and implemented reference-based contracting, including the challenges she encountered. She also discussed additional initiatives she implemented, including work to reduce prescription drug spending and administrative costs. She also discussed activities in other states trying to replicate what Montana did.

Ms. Arp asked if Montana saw any cost shift to the commercial market as a result of the changes made to the inpatient hospital payment structure. Ms. Bartlett said Montana has not seen any such shift. She noted other factors that may have influenced the lack of cost-shifting.

Ms. Duhamel asked if any Montana hospitals shut down. Ms. Bartlett said none had shut down.

4. Heard a Presentation on the Opioid Epidemic and State Insurance Regulators' Potential Role in Fighting It

Joel Ario (Manatt, Phelps & Phillips—Manatt) discussed Manatt's work with the American Medical Association (AMA) to develop state spotlights in several states, including Colorado and Pennsylvania, related to the opioid epidemic and develop policy recommendations to potentially address the issue. He said, in developing the spotlights, Manatt began with conducting an in-depth analysis of existing state policy, private initial and local activity to address the opioid epidemic. The next step was engaging key state insurance regulators, physicians, and other stakeholders about current policies, challenges and opportunities. Mr. Ario said, after this, Manatt conducted additional analysis to determine if and/or how the state measured success; where any gaps existed; and, if any gaps existed, how the state planned to address them.

Daniel Blaney-Koen (AMA) suggested several recommendations that state insurance regulators could implement to help end the opioid epidemic, including: 1) removing prior authorization for medication-assisted treatment (MAT); 2) increasing oversight and enforcement of mental health and substance use disorder (MH/SUD) parity laws; and 3) ensuring network adequacy for those needing treatment for an opioid use disorder. He said the state spotlights provide a roadmap for policymakers and key stakeholders to see what works and where further efforts are needed to end the nation's opioid epidemic, noting that parity plays a central role. He provided some examples of those states taking action on parity, such as Colorado, Mississippi, North Carolina and Pennsylvania.

Tim Clement (American Psychiatric Association—APA) discussed the background and solutions to parity implementation. He discussed the parity outlook for 2019, noting the problems with compliance, particularly as related to nonquantitative treatment limitations. He explained why the problems with parity implementation are unique. He said one main impediment is that securing full compliance requires more information than what is made available during the traditional form review process or through claims review during market conduct examinations. He suggested that requiring health carriers to submit enhanced attestation during the form filing process could make parity compliance more likely.

5. Heard a Presentation on the CHQI MH/SUD Parity Accreditation Program

Garry Carneal (ClearHealth Quality Institute—CHQI) explained that the CHQI MH/SUD Parity Accreditation Program is a comprehensive solution for health insurers and health benefits administrators to use in implementing the federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) compliance programs. He said the CHQI accreditation program provides a third-party assessment to determine whether a health benefit plan is meeting accreditation standards developed to reflect federal parity requirements. He noted three unique resources in the CHQI accreditation program to support health plans: 1) parity accreditation standards; 2) an online parity tool; and 3) a parity regulatory compliance guide. Mr. Carneal also discussed the need for such an accreditation program.

Kevin Malone (CHQI) discussed the CHQI's online parity tool. He described its functions, including one function that automatically identifies a wide range of parity "red flags" and areas where the user lacks information necessary to complete the parity compliance analysis. He also said the tool generates important feedback loops and reports that state insurance regulators can be given access to in order to help ensure parity compliance and optimization.

Having no further business, the Regulatory Framework (B) Task Force adjourned.

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Draft: 3/14/19

Regulatory Framework (B) Task Force
Conference Call
February 26, 2019

The Regulatory Framework (B) Task Force met via conference call Feb. 26, 2019. The following Task Force members participated: Michael Conway, Chair (CO); Scott A. White, Vice Chair (VA); Jim L. Ridling represented by William Rodgers, Steven Ostlund and Yada Horace (AL); Lori K. Wing-Heier represented by Sarah Bailey and Jacob Lauten (AK); Allen W. Kerr represented by Mel Anderson and William Lacy (AR); Ricardo Lara represented by Sheirin Ghoddoucy (CA); Stephen C. Taylor represented by Howard Liebers (DC); David Altmaier represented by Chris Struk (FL); Doug Ommen represented by Cynthia Banks Radke (IA); Dean L. Cameron represented by Weston Trexler and Kathy McGill (ID); Vicki Schmidt represented by Julie Holmes (KS); Nancy G. Atkins represented by John Melvin (KY); Gary Anderson represented by Kevin Beagan (MA); Al Redmer Jr. (MD); Eric A. Cioppa represented by Robert Wake (ME); Steve Kelley represented by Kristi Bohn (MN); Chlora Lindley-Myers (MO); Mike Chaney represented by Bob Williams (MS); Mike Causey represented by Robert Croom (NC); Jon Godfread represented by Chrystal Bartuska (ND); Bruce R. Ramge represented by Martin Swanson (NE); John Elias represented by Jennifer Patterson (NH); John G. Franchini represented by Mark Hendrick (NM); Glen Mulready represented by Ron Kreiter (OK); Andrew Stolfi represented by TK Keen (OR); Jessica Altman (PA); Raymond G. Farmer represented by Shari Miles (SC); Larry Deiter represented by Jill Kruger (SD); Kent Sullivan represented by Doug Danzeiser (TX); Todd E. Kiser represented by Jaakob Sundberg (UT); Mike Kreidler represented by Molly Nollette (WA); Mark Afafe represented by Nathan Houdek (WI); James A. Dodrill represented by Dena Wildman and Joylynn Fix (WV); and Tom Glause represented by Denise Burke (WY).

1. Discussed the Accident and Sickness Insurance Minimum Standards (B) Subgroup's 2019 Activities

Commissioner Conway said that during the Health Insurance and Managed Care (B) Committee's Feb. 14 conference call, the Committee adopted the revisions to the *Accident and Sickness Insurance Minimum Standards Model Act* (#170). This included changing the title of the model to the *Supplementary and Short-Term Health Insurance Minimum Standards Model Act*. He said the Executive (EX) Committee and Plenary are scheduled to consider adoption of the revised model at the Spring National Meeting.

Commissioner Conway said, with that work having been completed, the Accident and Sickness Insurance Minimum Standards (B) Subgroup's 2019 work is to consider revisions to the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act* (#171), which is the companion model regulation to Model #170. He said the Subgroup does not have a chair for 2019.

Commissioner Conway requested a volunteer to chair the Subgroup, and he asked anyone interested in volunteering for the position to contact NAIC staff. He said after a Subgroup chair is appointed, he anticipates the Subgroup starting work to revise Model #171 as quickly as possible in order to complete the work by the Fall National Meeting.

2. Discussed the HMO Issues (B) Subgroup's 2019 Activities

Commissioner Conway said that during the Health Insurance and Managed Care (B) Committee's Feb. 14 conference call, the Committee adopted the Task Force's recommendation to open the *Health Maintenance Organization Model Act* (#430) for revision to address any inconsistencies and conflicts in the model due to the revisions to the *Life and Health Insurance Guaranty Association Model Act* (#520), which added health maintenance organizations (HMOs) to the guaranty fund.

Commissioner Conway said, given the adoption of the recommendation, he anticipates one of the first items on the HMO Issues (B) Subgroup's agenda will be to consider adoption of a model law development request as a first step in beginning its work to revise Model #430. He said if the Subgroup adopts a Request for NAIC Model Law Development prior to the Spring National Meeting, the Task Force would consider its adoption at the Spring National Meeting.

Commissioner Conway said the Subgroup does not have a chair for 2019, and he requested a volunteer to chair the Subgroup. Commissioner White volunteered Virginia to chair the Subgroup because of its interest in the issue.

3. Discussed the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup's 2019 Activities

Commissioner Conway said the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup's 2019 charge is to consider developing a new NAIC model to establish a licensing or registration process for pharmacy benefit managers (PBMs). In addition, as part of this charge, the Subgroup may consider including this model in the new NAIC model provisions on PBM prescription drug pricing and cost transparency. He said Oregon has agreed to chair the Subgroup for 2019, and Maryland has agreed to be vice chair.

4. Discussed the ERISA (B) Working Group's 2019 Activities

Mr. Wake said the ERISA (B) Working Group intends to continue its focus in 2019 on assisting the states with understanding and implementing the U.S. Department of Labor's (DOL) federal rule on association health plans (AHPs). He said to support this effort, the Working Group plans to develop additional resources for the states to use as the states work to implement the DOL rule, as well as investigate any bad actors in this space.

Mr. Wake said the Working Group will also be coordinating with the DOL in areas of concurrent jurisdiction, including fully insured Employee Retirement Income Security Act (ERISA) plans and multiple employer welfare arrangements (MEWAs). He said the Working Group also plans to facilitate the sharing of state best practices on the financial and market regulation of fully insured and not fully insured MEWAs among the states, including, but not limited to, AHPs. He said he currently believes that much of the Working Group's work this year will be related to AHPs and MEWAs. He noted, however, that as the Working Group's 2019 charges state, the Working Group will continue to "monitor, report and analyze any new developments related to the ERISA, and make recommendations regarding NAIC strategy and policy with respect to those developments."

5. Discussed its Potential Agenda for the Spring National Meeting

Commissioner Conway outlined the Task Force's potential agenda for its meeting at the Spring National Meeting. He said he has invited Montana to discuss how it has used transparent pricing and contracting to address costs in its state employee benefit plan. He said he also anticipates the Task Force hearing a presentation discussing ways state insurance regulators might play a role in fighting the opioid epidemic. Lastly, he said the Task Force might hear an overview of a recently developed mental health substance use disorder parity accreditation program that health plans could use to comply with the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). He welcomed suggestions for additional agenda items. He requested that anyone having any such suggestions contact NAIC staff.

Having no further business, the Regulatory Framework (B) Task Force adjourned.

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Draft: 4/2/19

Pharmacy Benefit Manager Regulatory Issues (B) Subgroup
Conference Call
March 22, 2019

The Pharmacy Benefit Manager Regulatory Issues (B) Subgroup of the Regulatory Framework (B) Task Force met via conference call March 22, 2019. The following Subgroup members participated: TK Keen, Chair (OR); Al Redmer Jr., Vice Chair (MD); Chris Murray (AK); Yada Horace (AL); Ryan James (AR); Bruce Hinze (CA); Howard Liebers (DC); Tracy Swalwell and Johanna Nagel (IA); Patrick O'Connor (KY); Jeffery Zewe (LA); Chad Arnold (MI); Melinda Domzalski-Hansen (MN); Chlora Lindley-Myers and Mary Mealer (MO); Pam Koenig and Regan Hess (MT); Laura Arp (NE); Chanell McDevitt (NJ); Andy Romero (NM); Eric Lowe and Yolanda Tennyson (VA); Jennifer Kreidler (WA); Jennifer Stegall and Richard Wicka (WI); Ellen Potter (WV); and Jeff Rude (WY). Also participating were: Barbara D. Richardson (NV); and Jessica Altman (PA).

1. Adopted a Request for NAIC Model Law Development

Mr. Keen explained that the Subgroup's main item of business is to discuss and consider for adoption a Request for NAIC Model Law Development to develop a new NAIC model to establish a licensing or registration process for pharmacy benefit managers (PBMs). He noted that prior to the conference call, NAIC staff distributed the draft Request for NAIC Model Law Development. He asked for comments on the document. There were no comments.

Commissioner Redmer made a motion, seconded by Mr. James, to adopt the Request for NAIC Model Law Development. The motion passed unanimously.

2. Discussed its Next Steps

Mr. Keen said he anticipates both the Regulatory Framework (B) Task Force and the Health Insurance and Managed Care (B) Committee to consider adoption of the Subgroup's Request for NAIC Model Law Development at the Spring National Meeting. He said that following adoption by the Committee, the Subgroup plans to move forward with its work to develop the new model. He requested that Subgroup members and interested state insurance regulators submit suggestions to NAIC staff on any PBM state laws or regulations they would like the Subgroup to consider as it works to develop the new model.

Commissioner Richardson requested that the Subgroup keep in mind as it develops a PBM licensing or registration process to develop a process that promotes uniformity across the states and includes an electronic component. Mr. Keen expressed support for Commissioner Richardson's comments.

Having no further business, the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup adjourned.

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REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: New Model Law or Amendment to Existing Model

1. Name of group to be responsible for drafting the model:

Pharmacy Benefit Manger Regulatory Issues (B) Subgroup of the Regulatory Framework (B) Task Force

2. NAIC staff support contact information:

Jolie Matthews jmatthews@naic.org

3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.

The Subgroup has a charge to consider developing a new NAIC model to establish a licensing or registration process for pharmacy benefit managers (PBMs).

4. Does the model law meet the Model Law Criteria? Yes or No (Check one)

(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states? Yes or No (Check one)

If yes, please explain why

The proposed new model would provide a consistent approach among the states for providing a regulatory scheme for these entities to address, for some states, a potential regulatory gap.

b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?

Yes or No (Check one)

5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: The current subgroup would target completion of a model within one year.

6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: Some states have already implemented laws and/or regulations establishing a regulatory scheme for these entities, which may or may not be consistent with the provisions in the proposed new model. For those states with laws or regulations not consistent with the new model's provisions, the issue will be whether these states will want to re-open those laws or regulations after adoption the new model.

7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: Some states have already implemented laws and/or regulations establishing a regulatory scheme for these entities, which may or may not be consistent with the provisions in the proposed new model. For those states with laws or regulations not consistent with the new model's provisions, the issue will be whether these states will want to re-open those laws or regulations after adoption the new model.

8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

No

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

No. However, the U.S. Department of Health and Human Services (HHS) has proposed rules on rebating safe harbors. In addition, the HHS and/or other federal government agencies currently are considering proposing further federal policy guidance in the areas concerning PBMs and prescription drug pricing transparency and disclosure. In developing the new NAIC model, the Subgroup most likely will be discussing the same or similar issues.

Draft Pending Adoption

Attachment Four
Regulatory Framework (B) Task Force
4/6/19

Draft: 4/8/19

ERISA (B) Working Group
Orlando Florida
April 6, 2019

The ERISA (B) Working Group of the Regulatory Framework (B) Task Force met in Orlando, FL, April 6, 2019. The following Working Group members participated: Robert Wake, Chair (ME); Steven Ostlund (AL); Peg Brown (CO); Andria Seip (IA); Julie Holmes (KS); Frank Opelka (LA); Kristi Bohn (MN); Carrie Couch (MO); Ted Hamby (NC); Laura Arp and Martin Swanson (NE); Laura Miller (OH); Buddy Combs (OK); Jill Kruger and Frank Marnell (SD); Tanji Northrup (UT); Toni Hood (WA); and Richard Wicka (WI). Also participating were: Howard Liebers (DC); Paige Duhamel (NM); and Don Beatty (VA).

1. Adopted its 2018 Fall National Meeting Minutes

Mr. Ostlund made a motion, seconded by Ms. Brown, to adopt the Working Group's Nov. 15, 2018, minutes (*see NAIC Proceedings – Fall 2018, Regulatory Framework (B) Task Force, Attachment Eight*). The motion passed.

2. Discussed AHPs

Mr. Wake explained that the U.S. District Court for the District of Columbia issued an opinion in *New York v. U.S. Department of Labor*, which is a case challenging the U.S. Department of Labor's (DOL) final rule, "Definition of 'Employer' Under Section 3(5) of ERISA – Association Health Plans" issued June 21, 2018. In the opinion, the district court held that the DOL's final rule: 1) is clearly an "end-run" around the federal Affordable Care Act (ACA); 2) does not limit or constrain the purpose of the association sufficiently and so does violence to the federal Employee Retirement Income Security Act's (ERISA) careful statutory scheme that requires a "bona fide association" to act in the interest of its employer members; 3) does not focus on employee benefit plans arising from employment relationships; and 4) is not a reasonable interpretation of ERISA and so exceeds the statutory authority delegated by the U.S. Congress in ERISA. The court declared the DOL's final rule unlawful and that it must be set aside, and ordered the "bona fide group or association," the "commonality of interest" and the "working owners" provisions of the rule vacated and remanded to the DOL for consideration as to the remaining provisions.

Mr. Wake said the DOL posted a "questions and answers" document to give guidance in the wake of the ruling. The DOL document stated that: 1) association health plan (AHP) participants have a right to the coverage promised in their plan or policy, but things may change going forward; 2) the DOL disagrees with the ruling and is considering appealing the decision; 3) the ruling does not alter the states' authority to regulate AHPs under state insurance law and participants should contact their state insurance regulators with questions; and 4) consumers may contact the DOL to request assistance from a benefits advisor.

Ms. Arp said Nebraska has two AHPs that formed under the guidance of the DOL's final rule. She said both AHPs offer essential health benefits, so she does not anticipate much changing as a result of the ruling. She explained that whether the AHP is large group or small group does not change the benefits the AHP participants get; it just changes the amount they will pay. She said there are farmers and other sole proprietors in Nebraska who are getting coverage through AHPs, noting that the insurance department does not want to disrupt the status quo.

Mr. Wake said Maine ended up with a law clarifying that chambers of commerce qualify as AHP sponsors. He said the law will also revert to Maine's pre-ACA law which permitted separate rating for qualified AHPs in the aggregate, subject to regulatory approval, but community rating will still be required within the association with a maximum 3:1 variation based on age.

Ms. Seip asked whether other states are concerned about the impact of not allowing a sole proprietor to qualify as an employer. She said Iowa would like to see sole proprietors join AHPs.

Ms. Arp said she did not see who it was harming to allow sole proprietors to join AHPs.

Mr. Wake explained that the harm usually identified is to the ACA markets. He acknowledged, however, that ACA markets are different in different states.

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4/6/19

Katie Keith (Out2Enroll) recommended that the states pause their implementation efforts under the DOL's final rule pending a final outcome in the courts.

Mr. Ostlund asked about the concrete consequences of the ruling.

Mr. Wake suggested that the issue of noncompliant insurance plans is the “bread and butter” of state insurance regulators. So, should it become necessary to assist AHPs that are out of compliance to come into compliance, state insurance departments know how to do that.

William Megna (MEWA Association of America—MAA) said the ERISA definition of a multiple employer welfare arrangement (MEWA) contemplates the inclusion of sole proprietors. He said the states have leeway to define who can join a MEWA under state law and how MEWAs are to be rated.

Mr. Wake and Mr. Megna discussed whether a MEWA that includes individuals who are not ERISA employers can maintain its status as an ERISA plan at the MEWA level, as opposed to each individual employer member of the MEWA sponsoring a separate ERISA plan.

Christopher Condeluci (Coalition to Protect and Promote Association Health Plans) said he expects the DOL to appeal the decision and obtain a stay on the decision pending the appeal. He said 18 states have issued guidance that conforms to the DOL's final rule, with between seven and 10 states considering legislation consistent with the rule. He said 11 states and the District of Columbia are opposed to the DOL's final rule. He said AHPs are providing comprehensive coverage and are not intended to provide a way to avoid the ACA. He said there is legal precedent for the determination that a sole proprietor wear “two hats”; i.e., one of an employer and one of an employee.

Having no further business, the ERISA (B) Working Group adjourned into regulator-to-regulator session pursuant to paragraph 2 (pending investigations which may involve either the NAIC or any member in any capacity), paragraph 3 (specific companies, entities or individuals) and paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings.

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