



**National Association *of*
Insurance Commissioners**

& *The* CENTER
for INSURANCE
POLICY
and RESEARCH

FEDERAL HEALTH UPDATE:

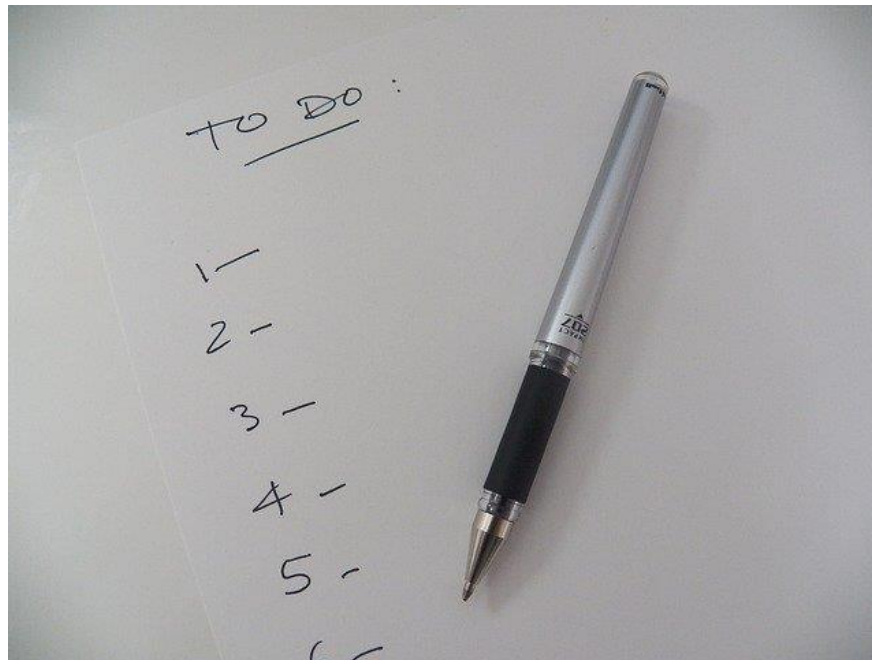
ASSOCIATION HEALTH PLANS, MEDICARE SUPPLEMENT, AND LONG-TERM CARE

Joe Tuschner

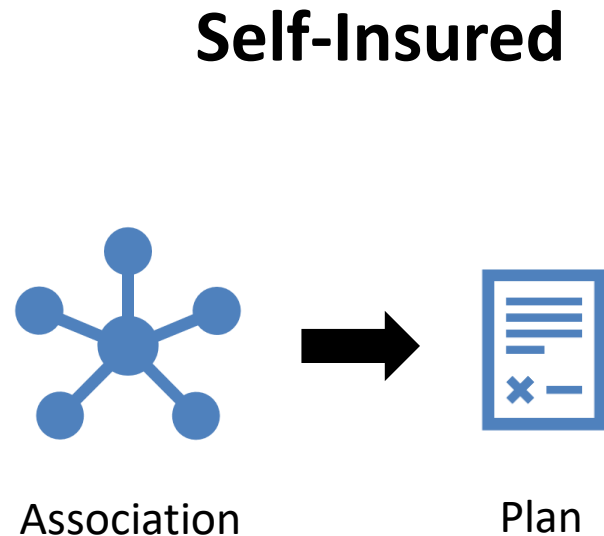
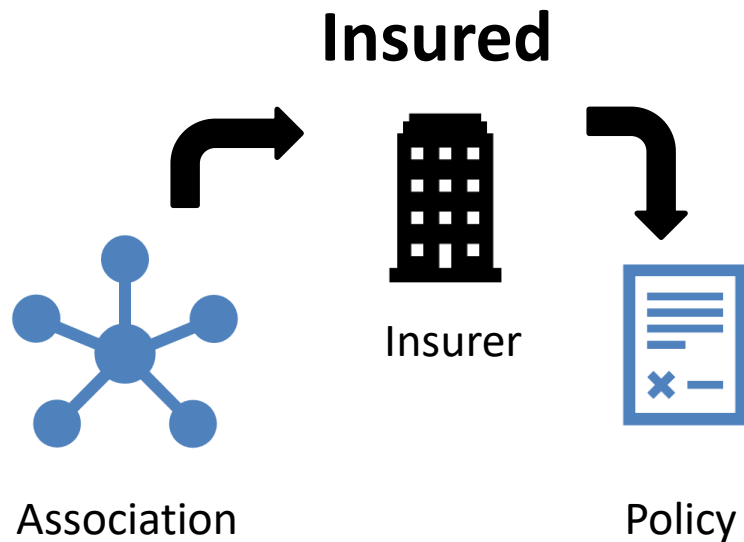
Senior Health Policy Advisor, National Association of Insurance Commissioners

Agenda

- Association Health Plans
 - Background
 - 2018 Rule from the Department of Labor
 - Legal challenge to the rule
- Medicare Supplement Plans
 - Medicare and CHIP Reauthorization Act (MACRA) changes for 2020
- Long Term Care Insurance
 - Market overview
 - NAIC activity
- Bonus: Health Reimbursement Arrangements (HRAs)



Association Health Plans



Association Health Plans - History

- Employee Retirement Income Security Act (ERISA, 1974)
 - 1983 amendments restored state authority to regulate Multiple Employer Welfare Arrangements, even when they are ERISA plans
- State regulation of AHPs
 - Solvency standards and oversight
- Federal “look through” guidance from CMS in 2011
 - Status of the member, not the association, determines the market rules
 - Individual members→individual market rules
 - Small group members→small group market rules
 - Large group members→large group market rules

2018 AHP Regulation from Department of Labor



- Pathway 1
 - Traditional association health plan rules
 - No new non-discrimination protections
- Pathway 2
 - Redefined 'employer'
 - Prohibits discrimination based on health factors

2018 DOL AHP Regulation

- Eased the limitations on who can form an association health plan
- Changed definition of employer
 - Allowed single multi-employer plans to be large group plans, regardless of the size of the member employers
- Changed commonality rules
 - Common industry OR common geography
- Allowed sole proprietors to be considered employers, expanding from employers with at least one other employee

AHP Regulation Lawsuit

- Attorneys general from NY and 11 other states sued DOL
- In March 2019, a judge found much of the rule unlawful– the rest sent back to DOL
 - It is an “end-run around the ACA”
 - It does “violence” to ERISA’s requirement that an association act in the interest of its employer members
 - It does not “focus on employee benefit plans arising from employment relationships”

AHP Regulation Lawsuit

- In April 2019, DOL filed an appeal
- In November 2019, the DC Circuit Court of Appeals heard oral arguments
- A decision on the appeal could come at any time



Where Do AHPs Stand Today?

- DOL issued guidance
 - Pathway 1 is not impacted
 - No new “Pathway 2” AHPs
 - No marketing of or new plans sold by “Pathway 2” AHPs
 - Existing plans may continue until end of plan year (or contract)
 - Reminder: Ruling was in March 2019
 - Existing plans may enroll new members who have a qualifying event
 - Compliance with “look through” guidance required a renewal
- States still regulate
- Some in Congress have introduced legislation to make the Regulation law
- Others have introduced legislation to overturn the Regulation

2020 Medicare Supplement Changes



- Medicare Access and CHIP Reauthorization Act (MACRA) passed in 2015
- Prohibits the sale of Medigap policies that cover Part B deductibles to “newly eligible” Medicare beneficiaries.

MACRA Changes

- Because they cover deductibles, standard plans C and F are not available for newly eligible beneficiaries
- Current enrollees may continue in these plans—the plans themselves are not going away

Medigap Plans for the Newly Eligible									
A	B	C	D	F	G	K	L	M	N

Who Is Newly Eligible?

- Attained age 65 on or after January 1, 2020; or
- First become eligible for Medicare due to age, disability or end-stage renal disease, on or after January 1, 2020.



MACRA State Action



- States had to adopt the same changes to Medicare supplement regulation or risk losing the authority to regulate
- All states adopted the necessary standards prior to January 1, 2020 and all states are in compliance.

Long Term Care Insurance

- 12 million Americans will need long term care in 2020
- Financing through:
 - Medicaid
 - Medicare
 - Private LTCI
 - Out-of-pocket

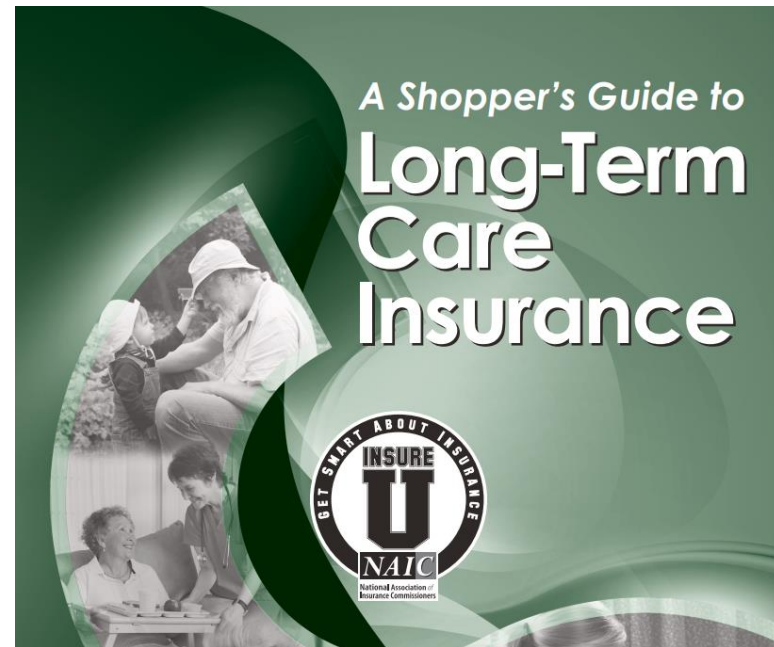


Long Term Care Insurance – Market Changes

- More consumers buying
 - 3 million → 7 million over a decade
- Needs rising as the population ages, costs increase
- Fewer insurers offering
 - >100 in 2004 → 12 in 2018
- Premiums rising
- Products evolving

LTCI – NAIC Efforts

- Long-Term Care Innovation (B) Subgroup
 - 10 Recommendations to Congress
 - Private Market Options
 - Shopper's Guide
 - Potential updates to Long-Term Care Insurance Model Act and Model Regulation



NAIC Recommendations to Congress

- Allow distributions from retirement accounts to purchase LTCI
- Create LTC Savings Accounts, similar to Health Savings Accounts
- Allow states to determine the percentage of inflation protection
- Allow flexible premium structures and/or cash value beyond return of premium
- Allow products that combine LTC coverage with other insurance products
- Improve alignment between federal law and NAIC models
- Increase employer flexibility for group LTCI
- Increase tax incentives
- Explore adding a home care benefit to Medicare
- Promote education around retirement security

LTCI – NAIC Efforts

- Long-Term Care Insurance (EX) Task Force Subgroups
 - Rate Review Practices
 - Restructuring Techniques
 - Reduced Benefit Options
 - Reserve Valuation Issues
 - Non-actuarial Considerations
 - Data Call Design and Oversight



Health Reimbursement Arrangements (HRAs)

- Employer contributes cash rather than offering traditional employer-sponsored insurance
- New rules effective as of Jan. 2020 expand availability
- Now available to employers of any size
- Employer reimbursements are not taxed
- Administration estimates >10 million enrollees by 2029



Individual Coverage HRA

- Employee buys coverage in the individual market
- Employer reimburses employees
 - No minimum or maximum
 - Must be on same terms to similarly situated employees
- Employee ineligible for tax credits unless
 - Employer offers too little to make lowest silver plan affordable
AND
 - Employee opts out of receiving any reimbursement
- Employer may divide classes, but can't offer both HRA and traditional coverage to the same employees

Excepted Benefit HRA

- Employee buys qualifying coverage
 - Excepted benefits (dental, vision, etc)
 - Short-term, limited duration
 - COBRA
- Employer reimburses employee up to \$1,800 per year
- Employer must also offer a group health plan, but can give employees a choice of traditional ESI or excepted benefit HRA

THANK YOU

Joe Touschner

Senior Health Policy Advisor

National Association of Insurance Commissioners

jtouschner@naic.org