FEDERAL HEALTH UPDATE:
ASSOCIATION HEALTH PLANS, MEDICARE SUPPLEMENT, AND LONG-TERM CARE

Joe Touschner
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

Insured

Association → Insurer → Policy → Self-Insured

Association

Policy

Plan
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

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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