PROGRAM MEMORANDUM
INSURANCE COMMISSIONERS
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Department of Health and Human Services

Centers for Medicare & Medicaid Services

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Title: Medigap Insurance Standards Bulletin Series -- INFORMATION

Subject: Processing Applications for Medigap Guaranteed Issue Policies and Policies Sold during Open Enrollment Periods

Market: Medigap

I. PURPOSE

The purpose of this bulletin is to clarify the interpretation of certain statutory requirements of sections 1882(s)(2) and (3) of the Social Security Act (the Act). These sections govern a Medicare beneficiary's right to purchase a Medicare supplemental policy (commonly referred to as a Medigap policy) during the six-month Medigap open enrollment period, or on a guaranteed issue basis when certain circumstances apply.

Specifically, this bulletin will focus on the actions an issuer is required to take when an applicant has federally-mandated open enrollment or guaranteed issue rights. This bulletin does not address issues that have arisen about how to determine **whether** an individual has open enrollment or guaranteed issue rights. Rather, it specifies the issuer's obligations with respect to beneficiaries who clearly have those rights.

II. BACKGROUND

Section 1882(s)(2) of the Act requires an issuer to make available any Medigap policy it sells in a state to any Medicare beneficiary during the first six months the individual is both age 65 or older and is enrolled in Part B of Medicare. During the Medigap open enrollment period, an issuer may not deny or condition the issuance or effectiveness of a Medigap policy, or discriminate in the pricing of the policy because of health status, claims experience, receipt of health care, or medical condition. [i]

Section 1882(s)(3) of the Act provides that certain classes of Medicare beneficiaries are entitled to purchase a Medigap policy on a guaranteed issue basis. The six classes of beneficiaries entitled to this right are set forth in subsection 1882(s)(3)(B) of the Act. Subsection (s)(3)(C) describes the types of policies the individual is entitled to purchase on a guaranteed issue basis.[ii] Subsection (s)(3)(E) establishes the time period during which an individual must seek to enroll in a Medigap policy on a guaranteed issue basis. To prove that an individual has these rights, subsection (s)(3)(A) requires that the individual submit evidence of the date of termination or disenrollment under a circumstance identified in subsection (s)(3)(B) along with the application for the Medigap policy.

III. ISSUES

A. Timely Processing of Applications

With respect to individuals who have rights under section 1882(s)(2) and (3), questions have been raised related to the application process and the timing of the effective date of coverage of a Medigap policy purchased on a guaranteed issue basis or during open enrollment. Specifically, we have been asked whether coverage must be made effective as of the application date or even retroactive to the date of the loss of previous coverage that triggered the guaranteed issue right.

Subsections 1882(s)(2)(A) and (s)(3)(A) provide that when an individual has open enrollment or guaranteed issue rights, the issuer may not "condition the issuance or effectiveness" of any of the specified Medigap policies that it offers and makes available to new enrollees. All applicants with open enrollment or guaranteed issue rights must be accepted and must be offered the issuer's best rate.[iii] If the best rate happens to be one that is offered to those applicants who are medically underwritten, then that rate must also be offered to applicants with guaranteed issue rights. (See Program Memorandum Transmittal No. 01-01, entitled "Rates for Guaranteed Issue Medigap Policies.")

While it is clear that the issuer may not delay the issuance or the effective date of a policy because of the individual's health status, the federal law does not impose specific time limits on the processing of applications, and does not require issuers to give special consideration, from an administrative perspective, to guaranteed issue applications. If there were a consistent pattern of taking **longer** to process applications for individuals with guaranteed issue rights than for other applicants, or if a particular application was delayed so egregiously that it could be viewed as "conditioning the effectiveness" of the policy, we might have a basis for finding that the guaranteed issue requirement had been violated. However, if individuals with open enrollment or guaranteed issue rights are treated at least as well as other applicants, there would be no federal law violation.

The statute does not expressly require that a guaranteed issue policy be issued faster than other policies. Therefore, an issuer can follow its normal procedures for processing applications, unless state law places additional restrictions on issuers with respect to applications for guaranteed issue policies. It is within the purview of the states to protect the interests of applicants with guaranteed issue rights by imposing or negotiating time limits for the processing of applications for guaranteed issue Medigap policies. For instance, when a guaranteed issue right is triggered by loss of other coverage, a state could require issuers to make the Medigap policy effective as of the date of application, or even retroactive to the loss of the prior coverage, unless the beneficiary asks for a later effective date.

B. Effective Date of the Policy

Subsection 1882(s)(2)(A) specifies that open enrollment rights apply "in the case of an individual for whom an application is submitted prior to or during the six-month [open enrollment] period. . . ." (Emphasis added.) Section 1882(s)(3) specifies the period during which an individual with guaranteed issue rights may "seek to enroll" under a Medigap policy. (We will refer to both of these timeframes as the "application period.") As long as the beneficiary applies no later than the end of that period, he or she is entitled to issuance of a policy. However, the timing of the effective date may depend on other factors. First, section 1882(d)(3) of the Act will generally preclude a company from issuing a new policy before other coverage has terminated. (The

requirements of that section of the Act are commonly referred to as "anti-duplication" requirements.) Second, even if there is no specific prohibition against duplicating other coverage through the issuance of the Medigap policy, the purchaser will likely not want to pay for duplicate coverage and will want the replacement coverage to begin as soon as the prior coverage has terminated. Third, if the individual applies close to the end of the application period, the policy might take effect after the end of that period.[iv] Unless state law places further restrictions on issuers, the issuer can follow its normal procedures for processing applications, as long as the procedures are the same for all applicants, whether or not they have guaranteed issue rights.

C. Filing of Multiple Applications during the Application Period

We have been asked whether an individual may apply for more than one policy during an open enrollment or guaranteed issue period. If an individual otherwise meets all the criteria for having open enrollment or guaranteed issue rights, the only other limitation is that the application must be filed during the application period. The statute does not limit the number of times the individual can apply during that period. If an individual who has already purchased a guaranteed issue policy is still in a guaranteed issue or open enrollment period, and is dissatisfied with the policy for any reason, the individual may apply for another policy on a guaranteed issue basis. The individual must, of course, file an application for replacement coverage. See section 18 of the NAIC Model (Requirements for Applications and Replacement Coverage). Under these provisions, the individual must promise to drop the prior policy as soon as the new policy is in effect. This requirement protects the issuer from knowingly violating the section 1882(d) anti-duplication requirements.

IV. ENFORCEMENT

In the event CMS receives a complaint about an issuer engaging in practices that may constitute a violation of section 1882 of the Act, we will cooperate with the involved state in investigating the complaint and pursuing any necessary enforcement activity.

Where to get more information:

If you have any questions regarding this bulletin, contact the Private Health Insurance Group, the Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration via e-mail at *phigmedigap@cms.hhs.gov* or by phone at (410) 786-1565.

You may obtain an electronic copy of this bulletin and other technical Medigap regulatory resources at *www.hcfa.gov/medicaid/medigap.* Consumer-oriented Medigap materials can be obtained at *www.medicare.gov*

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i. When a policy is purchased during open enrollment, under section 1882(s)(2) of the Act, the issuer may impose a preexisting condition exclusion period during the first six months the policy is in effect, but this exclusion period must be offset by prior creditable coverage. When a policy is purchased using guaranteed issue rights under section 1882(s)(3) of the Act, no preexisting condition exclusion period may be imposed.

ii. This will generally be plans A, B, C, or F. However, under clauses (v) and (vi) of subsection 1882(s)(3)(B) it could include a plan the individual previously held or could include any plans A through J available in the market.

[iii] Issuers are permitted to have rate differentials for such demographic factors as age, gender, geographic area and other non-health factors. By "best rate" we mean the best rate based on health status within a permissible rate cell.

[iv] For instance, many issuers start Medigap coverage only on the first of the month because this is how the Medicare program operates its eligibility system and the Medicare + Choice enrollment and disenrollment processes work. Therefore, if, for example, an individual does not apply for a guaranteed issue policy until the sixty-third day after loss of coverage under a nonrenewing Medicare + Choice plan (e.g., March 4) and the issuer normally starts coverage only on the first of the month following receipt of a completed application, coverage might not start until April 1. The individual could have arranged for seamless coverage, however, by submitting an application before December 31 while he or she was still covered by the nonrenewing Medicare + Choice plan.