



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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Report From Agency

Report on Section Ins 3.39 and 3.55, Wis. Adm. Code, relating to Medicare supplement insurance and affecting small business

Clearinghouse Rule No. 19-036
Submitted Under s. 227.19 (3), Stats.

(The proposed rule-making order is attached.)

(a) A detailed statement of basis for the proposed rule and how the rule advances relevant statutory goals or purposes:

The proposed rule amends the current rules to incorporate the National Association of Insurance Commissioners (NAIC) model regulation that implements the Medicare Supplement Insurance Minimum Standards Model Act to comply with the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA). Medicare supplement policies are policies purchased by Medicare beneficiaries to cover Medicare deductibles, co-insurance and selected services that Medicare does not cover. Medicare establishes eligibility rules, benefits and coverage limits through standardized Medicare supplement Plans A to N. However, Wisconsin is a waived state, meaning Wisconsin is waived from implementing the federal lettered plans, and instead Wisconsin requires minimum standardized supplemental benefits with seven standardized benefit riders. This is advantageous to both the insurer and the consumers as this system permits consumers to compare products on an equal basis to determine the best product to meet their insurance needs.

However, beginning with January 1, 2020, Wisconsin must redefine the eligibility of individual who may purchase, and insurers who may advertise and sell, one of the seven riders. Specifically, MACRA requires that policies issued to individuals who are first eligible for Medicare benefits on or after January 1, 2020, not have the option to purchase coverage for the Medicare Part B medical deductible rider. This change does not affect those who became eligible for Medicare prior to January 1, 2020, through age or disability, including end-stage renal disease.

The remainder of the proposed rule; updates terminology, creates consistency in numbering and references, and updates and simplifies the appendices to the rule. However, as noted previously, since Medicare supplement and Medicare select plans are guaranteed renewable for life, the Office of the Commissioner of Insurance (OCI) cannot repeal original rule text that was based upon previous federal law changes since individuals may still have existing policies regulated under prior sections. Instead the OCI, in this draft, adopts a parallel citation approach for ease of navigation. Subsections that apply to all plans or a plan issued to groups or individuals who were first eligible for Medicare prior to June 1, 2010, appear with just a number, i.e. s. Ins 3.39 (4), Wis. Adm. Code. All appendices and subsections that apply to policies issued to groups or individuals who were first eligible for Medicare on or after June 1, 2010, and prior to January 1, 2020, appear as a number with the letter "m" following the number, i.e. s. Ins 3.39 (4m), Wis. Adm. Code. For the new plans that will be issued to groups or individuals who are newly eligible for

Medicare on or after January 1, 2020, all appendices and subsections appear as a number with the letter “t” following the number, i.e. s. Ins 3.39 (4t), Wis. Adm. Code. Finally, there are citation corrections within cross references to existing or newly created s. Ins 3.39, Wis. Adm. Code, provisions within the insurance administrative code.

(b) Summary of the public comments and the agency’s responses to those comments:

Comment: Rule draft was ambiguous whether Medicare Part B deductible rider could be sold after January 1, 2020 to persons eligible prior to January 1, 2020 when the Medicare changes under MACRA take effect.

Response: Changed language to clarify that the rider can be sold to persons eligible prior to January 1, 2020.

Comment: Definition of newly eligible was not the same as the NAIC model regulation draft.

Response: Modified the definition to more closely mirror the NAIC model regulation.

Comment: Rule draft appeared to prohibit marketing of the Medicare Part B deductible rider after January 1, 2020.

Response: Clarified that marketing is permitted to persons eligible for Medicare prior to January 1, 2020.

Comment: Subsection titles appeared inconsistent with the content of the subsection regarding effective dates.

Response: Amended all titles for consistency and accuracy.

Comment: Appendices missing column headers for insured payment responsibility.

Response: Amended Appendices for consistency, and that benefits are tied to when the person was first eligible for Medicare.

Comment: Suggestion that a phrase within the Medicare Part B copayment and coinsurance rider referencing Part B deductible be removed.

Response: The wording of the rule is accurate; no changes are needed.

(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:

The office revised the proposed rule to incorporate the suggestions contained in the comments received. The primary concern raised was to ensure that consumers could maintain and obtain the Medicare Part B deductible rider after January 1, 2020 provided the consumer was eligible for Medicare prior to January 1, 2020. Modification included amending the title naming convention from effective date of policies to eligibility date of the consumer. The revisions made throughout the proposed rule were made to ensure language is clear and unambiguous regarding the federal change to Medicare supplemental coverage under MACRA.

(d) Persons who appeared or registered regarding the proposed rule:

Appearances for:

None

Appearances against:

None

Appearances for information:

Guenther Ruch
Jill Helgeson, BOALTC
Rick Erickson

Registrations for:

None

Registrations against:

None

Registrations neither for nor against:

Amy Sholis, NeuGen LLC
Will Kramer and Michelle Littel, WPS Health Ins.
John Trochell, MercyCare Health Ins.
Jonathon Moody and Elena Haffenbredl, Quartz Ins.
Mary Haffenbredl, America's Health Insurance Plans (AHIP)
Kelsey Avery, Wisconsin Association of Health Plans (WAHP)

Letters received:

Guenther Ruch
Heather Jerbi, AHIP
Michelle Littel, WPS Health Insurance
LisaAnne Keller, UnitedHealthcare Insurance Company
Kelsey Avery, WAHP
Rick Erickson

(e) An explanation of any changes made to the plain language analysis of the rule under s. 227.14 (2), Stats., or to any fiscal estimate prepared under s. 227.14 (4), Stats.

The plain language was reviewed to ensure consistency with the modification made to the rule in light of the Legislative Council recommendation and public comment received.

(f) The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:

All comments were complied with and corrected with the exception of reusing a number currently in the regulation. In order to achieve the three silos for identifying the requirements and benefits based upon date a person is first eligible for Medicare. Specifically, OCI reused Ins 3.39 (4m) citation but followed all Legislative Council suggestions if OCI decided to continue reusing the subsection.

(g) The response to the report prepared by the small business regulatory review board:

The small business regulatory review board did not prepare a report.

(h) Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis is Not Required because the rule will not have a significant economic impact on a substantial number of small businesses.

(i) Fiscal Effect

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations