

STATEMENT OF SCOPE

Office of the Commissioner of Insurance

Rule No.: 145 Ins 3.39 and 3.55

Relating to: Amending Medicare supplemental insurance regulations and reporting requirements

Rule Type: Emergency

1. Finding/nature of emergency (Emergency Rule only):

In order for insurers to offer prior approved Medicare supplement, select and cost insurance plans for the 2020 plan year during open enrollment that begins in October, the Office of the Commissioner of Insurance is required to issue an emergency rule as the permanent rule will not be effective until December 1, 2019. It is vital to the Wisconsin marketplace to ensure consumers are provided a full array of policies that provide the allowable coverage in accordance with the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA).

2. Detailed description of the objective of the proposed rule:

In Wisconsin, Medicare supplement, select and cost products are currently regulated through s. Ins 3.39, Wis. Adm. Code, inclusive of the appendices. The proposed rule would modify s. Ins 3.39, Wis. Adm. Code, and appendices in order to implement modifications delineated by the National Association of Insurance Commissioners Medicare Supplement Insurance Minimum Standards Model Act (NAIC Model Act) and to reflect changes in MACRA. The proposed emergency rule will clarify what Medicare riders may be offered to persons eligible for Medicare based upon the date the individual first becomes eligible for Medicare. For individuals newly eligible Medicare on or after January 1, 2020, MACRA restricts the ability for those individuals from purchasing the Medicare Part B medical deductible rider. The emergency rule will delineate throughout s. Ins 3.39 the benefits that are required and additional permissive coverage that may be added at the insured's option based upon the date of the individual's initial applicability for Medicare. Adjusting Wisconsin's regulations now allows insurers and intermediaries time to adjust to these new requirements before the effective date of the changes. The proposed rule will amend existing language to match language in the NAIC Model Act. Additionally, the proposed rule will correct typographical errors, eliminate sections that are no longer used, simplify language, and replace outdated terminology. The proposed rule will also add specific reference to prohibition of commissions on a basis of guarantee issue.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Wisconsin continues to be an exempt state under the federal Medicare law with respect to benefit plan design. As an exempt state, the Office regulates Medicare supplement products through regulation of insurers issuing Medicare products. However, amending Wisconsin's Medicare supplement administrative rules to comply with federal law and to be consistent with the NAIC Model Act will place insurers on an even playing field with other states, will provide better outcomes for consumers, and will ensure that consumers continue to have a range of Medicare supplement options.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. § 632.81 provides “the commissioner may by rule establish minimum standards for benefits, claims payments, marketing practices, compensation arrangements and reporting practices for medicare supplement policies, medicare replacement policies and long-term care insurance policies.”

Federal law provides that state regulation of Medicare supplemental policies must meet or exceed the NAIC model standards. 42 U.S.C. 7 § 1935ss (k) (3) provides that no Medicare supplemental policy may be certified by the Secretary, no certification shall remain in effect, and no state regulatory program shall be found to meet or continue to meet requirements “unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the amended NAIC Model Regulation...”

NAIC recently published an updated NAIC Model Act and guidelines in 2017.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

50 hours

6. List with description of all entities that may be affected by the proposed rule :

Entities that are affected include: insurance companies providing Medicare supplemental insurance policies or Medicare cost insurance policies, insurance agents selling Medicare supplemental insurance policies or Medicare cost insurance policies, and consumers who will be eligible for Medicare coverage on or after January 1, 2020.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

The NAIC Model Act implements MACRA and previous federal Medicare supplement and Medicare replacement regulations. MACRA requires specific standards for Medicare supplement policies or certificates issued to individuals who are newly eligible for Medicare on or after January 1, 2020.

8. Anticipated economic impact of implementing the rule :

Insurers will need to produce, submit and create new forms for use by the companies and their authorized representatives. Once reviewed and approved by the Commissioner, these forms are frequently published online reducing the on-going cost with the new and modified forms. The rule is unlikely to have a significant impact on small businesses as insurance intermediaries will have little to no cost access to the new policy forms.

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