



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
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Wisconsin.gov

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REPORT ON Section Ins 3.39, Wis. Adm. Code, relating to
Medicare supplement and replacement insurance

Clearinghouse Rule No. 08-112
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 Centers for Medicare & Medicaid Services (CMS) required the National Association of Insurance Commissioners (NAIC) to make conforming changes to the Medigap model regulation by incorporating changes necessary to implement requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA Public Law 110-233) and delegated the function of implementing the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA, Public Law 110-175) to NAIC. The GINA law requires states to adopt necessary changes by July 1, 2009 and to have regulations in place for MIPPA by September 24, 2009. States are required to adopt the NAIC model revision in order to continue to regulate the Medigap marketplace.

CMS delegates enforcement of MIPPA and GINA and the underlying Medicare supplement and Medicare replacement insurance products to the states that have incorporated into the state's insurance regulations, the NAIC Model Act. To date Wisconsin has passed several NAIC Model Acts through statute and most recently administrative rule governing the Medicare supplement and Medicare replacement products. In Wisconsin Medicare supplement and Medicare replacement products are currently regulated through s. Ins 3.39, Wis. Adm. Code, inclusive of the appendices. The proposed rule modifies s. Ins 3.39, Wis. Adm. Code, and several appendices in order to comply with the MIPPA, GINA and the NAIC requirements, to the extent necessary, and updates the appendices to reflect those changes

The proposed rule preserves the regulatory oversight of products primarily sold to Wisconsin seniors and maintains rigorous standards for disclosure of benefits, consumer rights and marketing practices. Specifically, ss. 601.41, 625.16, 628.38, 632.73, 632.76, and 632.81,

Wis. Stats., permit the commissioner to promulgate rules regulating various aspects of Medicare supplement and Medicare replacement products while s. 628.34, Wis. Stats., authorizes the commissioner to promulgate rules governing disclosure requirements and unfair marketing practices for disability policies, which includes Medicare supplement and Medicare replacement products. In furthering this oversight, the proposed rule includes specific requirements for issuers that are marketing and selling insurance products intended to wrap around or fill gaps in Medicare Advantage products. The proposed rule will require these insurance products to comply with the Medicare supplement and replacement regulations.

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

Comment: Donna Bryant, on behalf of the Board on Aging and Long-Term Care requested modifications to the proposed rule to expand guarantee issue rights to Medicare supplement insurance for Medicare beneficiaries who experience a loss of an entire provider network, who exhaust HIRSP benefits, who experience an increase in the actual premium of 25% or more for basic health insurance coverage, or who calculate that their contribution and out-of-pocket costs for a retiree plan will equal or exceed 25% of their actual income.

Response: OCI has established an advisory council to review BOALTC's request and advise the Commissioner regarding modifications that may be warranted.

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

All letters received contained comments primarily editorial in nature. Each comment was reviewed and most of the editorial comments resulted in modifications to the rule. Comments considered to be editorial ranged from requests to change a word tense, modify word order, or modify benefits to parallel current regulation or parallel across the rule. In addition to editorial comments, each letter also contained substantive requests or raised questions as follows:

Anthem Blue Cross Shield letters:

- Section Ins 3.39 (14m) was created in response to a question regarding loss ratio calculation modifications for policies effective on or after June 1, 2010.

UnitedHealth Group letter:

- Throughout the rule reference to "policies issued" was modified to "policies with effective dates". The same comment was also raised by Physicians Mutual Insurance Co., WPS, and America's Health Insurance Plans
- References to Basic Cost Plus plans were removed as suggested. The same comment was also raised by WPS.

Frett/Barrington Limited letter:

- The riders that are to be available for cost sharing plans has been clarified and s. Ins 3.39 (30m) (q) was created to clearly identify available riders for these plans.

Physicians Mutual letter:

- Section Ins 3.39 (4s) was modified to include bold print.
- Changes proposed to s. Ins 3.39 (5) 4., 6. and 12., were removed from the rule.

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

Appearances for:

Donna Bryant, Board on Aging and Long-Term Care.

Appearances against:

None

Appearances for information:

None

Registrations for:

Karen Geiger, Anthem Blue Cross and Blue Shield of Wisconsin
Ellen Alwin, GHC-SCW
Kathy O'Neil, GHS-SCW

Registrations against:

None

Registrations neither for nor against:

Kathryn Ambelang, WPS Health Insurance
Tony Langenohl, America's Health Insurance Plans

Letters received:

- Anthem Blue Cross and Blue Shield, Karen Geiger. Letters dated December 9, 2008, and February 10, 2009.
- UnitedHealth Group, Dotti Outland. Letter dated December 9, 2008.
- America's Health Insurance Plans, Laurie Kuiper. Letter dated December 9, 2008.
- Frett/Barrington Limited, Terrence Frett. Letter dated January 16, 2009.
- WPS Health Insurance, Kathryn Ambelang. Letter dated January 30, 2009.
- State of Wisconsin Board on Aging and Long Term Care, Heather Bruemmer. Letter dated February 10, 2009 with attachments.
- Physicians Mutual Insurance Co., Phil Powell. Letter dated February 10, 2009.

(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.

No changes were made to either the plain language analysis beyond Legislative Council staff recommendations. No changes were made to the fiscal estimate.

(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 except the following:

2. i. U.S. Code reference was added, however the popular names have been retained within the section as contained within the NAIC Model Act and consistent with other similar sections.

2. l. When possible the proposed rule was modified to comply with recommendation, however several sections were not modified if language was consistent with NAIC Model Act or consistent with parallel sections within Ins. 3.39 not amended.

2. q. The use of "such" has been limited but not eliminated and where remaining does not cause confusion.

2. v. The structure of s. Ins 3.39 (5m) was drafted to parallel s. Ins 3.39 (5) for ease of use by issuers, regulators and consumers.

2. z. The use of Secretary has been defined and differentiates between the state Secretary of the Department of Health Services and the federal Secretary of the Department of Health and Human Services.

4. a. Medicare supplement and replacement insurance products are types of disability insurance, therefore, the reference to s. 628.38, Stats., is proper.

4. vv. The Centers for Medicare Services has developed its own complaint and grievance procedures for federally required benefits. However, because Wisconsin has a waiver from the CMS, Medicare supplement, select and replacement insurance products also contain as required benefits certain mandated health benefits. The state only has jurisdiction over complaints and grievance related to these Wisconsin mandated benefits.

4. iii. The language in s. Ins 3.39 (36) is required by the NAIC Model Act.

4. nnn. The different explanations related to coverage for blood relates to the difference between Medicare Part A and Medicare Part B coverage.

6. d. The federal regulations relating to GINA do not include reference to Medicare replacement policies.

(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.