

## STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 22, 2020

*Document Control Center 06/22/20@10.54 AM*COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. INS-2020-00128

*Ex Parte:* In the matter of Amending  
Rules Governing Minimum Standards  
for Medicare Supplement Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

As a result of action by the 2020 General Assembly, specifically Acts of Assembly Chapter 1161 (SB 250), the Bureau of Insurance ("Bureau") has undertaken a review of Chapter 170 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Minimum Standards for Medicare Supplement Policies," for compliance with this new legislation.

The new legislation requires insurers, health services plans and health maintenance organizations issuing Medicare supplement policies or certificates in Virginia to offer to persons under age 65 who reside in the Commonwealth, are eligible for Medicare by reason of disability and are enrolled in Medicare Part A and Part B, an opportunity to purchase at least one of the

Medicare Supplement policies or certificates it issues. The Bureau has created a new section in Chapter 170 at 14 VAC 5-170-95 to address this new requirement, and amended the application found at 14 VAC 5-170-160. This new section and amendment to the application are necessary to define these new requirements for both health carriers and consumers.

NOW THE COMMISSION is of the opinion that the proposal to amend the Rules at Chapter 170 of Title 14 of the Virginia Administrative Code as submitted by the Bureau should be considered for adoption with a proposed effective date on or before January 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to amend Chapter 170 of Title 14 of the Virginia Administrative Code, by adding a new section at 14 VAC 5-170-95 and amending 14 VAC 5-170-160, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amendments to Chapter 170 shall file such comments or hearing request on or before August 17, 2020, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2020-00128. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <https://scc.virginia.gov/pages/Case-Information>. All comments shall refer to Case No. INS-2020-00128.

(3) If no written request for a hearing on the proposal to amend rules as outlined in this Order is received on or before August 17, 2020, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the new section and amendments in Chapter 170 of Title 14 of the Virginia Administrative Code as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to all carriers licensed in Virginia to write accident and sickness insurance and to all interested persons.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

(7) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:  
C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General,  
Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424,  
[MBrowder@oag.state.va.us](mailto:MBrowder@oag.state.va.us); and a copy hereof shall be delivered to the Commission's Office of  
General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

## Project 6332

## STATE CORPORATION COMMISSION, BUREAU OF INSURANCE

## Rules Governing Minimum Standards for Medicare Supplement Policies

14VAC5-170-95. Persons eligible by reason of disability.

A. On or after January 1, 2021, an issuer that offers Medicare supplement policies or certificates shall offer at least one of its Medicare supplement plans that it actively markets to any individual who resides in this Commonwealth, is under 65 years of age, is eligible for Medicare by reason of disability as defined by 42 USC § 426 (b), and is enrolled in Medicare Part A and B, or will be so enrolled by the effective date of coverage in accordance with the provisions of § 38.2-3610 of the Code of Virginia. The Medicare supplement policy or certificate offered shall be guaranteed renewable. Such Medicare supplement policy or certificate shall be offered and issued during the following enrollment periods:

1. Upon the request of the individual during the six-month period beginning with the first month in which the individual is eligible for Medicare by reason of a disability. For those persons who are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision; or
2. Upon the request of the individual during the 63-day period following voluntary or involuntary termination of coverage under a group health plan.

B. An individual who met the eligibility requirements outlined in subsection A of this section prior to January 1, 2021 shall begin a six-month period to enroll in a Medicare supplement policy or certificate on January 1, 2021.

C. A Medicare supplement policy or certificate issued to an individual under subsection A of this section shall not exclude benefits based on a preexisting condition if the individual has a continuous period of creditable coverage of at least six months as of the effective date of coverage.

D. An issuer may develop premium rates specific to the class of individuals described in subsection A of this section.

**14VAC5-170-160. Requirements for application forms and replacement coverage.**

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

[Statements]

1. You do not need more than one Medicare supplement policy.
2. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.
3. You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
4. If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available,

a substantially equivalent policy) will be reinstated if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

5. If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

6. Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

#### [Questions]

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or

more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS. (Please mark yes or no below with an "X".)

To the best of your knowledge,

1. a. Did you turn age 65 in the last 6 months?

Yes\_\_\_\_ No\_\_\_\_

b. Did you enroll in Medicare Part B in the last 6 months?

Yes\_\_\_\_ No\_\_\_\_

c. If yes, what is the effective date?\_\_\_\_\_

2. a. Are you under age 65 and eligible for Medicare by reason of disability as defined by federal law?

Yes    No

b. Are you enrolled in Medicare Part A and Part B?

Yes    No

c. If yes, what is the effective date of Part A \_\_\_\_\_ ; Part B \_\_\_\_\_ ?

~~2.~~ 3. Are you covered for medical assistance through the state Medicaid program?

(NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.)

Yes\_\_\_\_ No\_\_\_\_

If yes,

a. Will Medicaid pay your premiums for this Medicare supplement policy?

Yes\_\_\_\_ No\_\_\_\_

b. Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes\_\_\_\_ No\_\_\_\_

~~3.~~ 4. a. If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START \_\_/\_\_/\_\_ END \_\_/\_\_/\_\_

b. If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes\_\_\_\_ No\_\_\_\_

c. Was this your first time in this type of Medicare plan?

Yes\_\_\_\_ No\_\_\_\_

d. Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes\_\_\_\_ No\_\_\_\_

4. ~~5.~~ a. Do you have another Medicare supplement policy in force?

Yes\_\_\_\_ No\_\_\_\_

b. If so, with what company, and what plan do you have (optional for Direct Mailers)?

\_\_\_\_\_

c. If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes\_\_\_\_ No\_\_\_\_

5. 6. Have you had coverage under any other health insurance within the past 63 days?

(For example, an employer, union, or individual plan)

Yes\_\_\_\_ No\_\_\_\_

a. If so, with what company and what kind of policy?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b. What are your dates of coverage under the other policy?

START \_\_/\_\_/\_\_ END \_\_/\_\_/\_\_

(If you are still covered under the other policy, leave "END" blank.)

B. Agents shall list any other health insurance policies they have sold to the applicant.

1. List policies sold which are still in force.
2. List policies sold in the past five years which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant

and the agent, except where the coverage is sold without an agent, shall be provided to the applicant, and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by subsection D above for an issuer shall be provided in substantially the following form in no less than 12 point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT  
INSURANCE OR MEDICARE ADVANTAGE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement insurance or Medicare Advantage and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing

Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason (check one):

Additional benefits.

No change in benefits, but lower premiums.

Fewer benefits and lower premiums.

My plan has outpatient prescription drug coverage and I am enrolling in Part D.

Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. (optional for Direct Mailers)

Other. (please specify)

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1. Note: If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing preexisting condition limitations, please skip to statement 2 below. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

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(Signature of Agent, or Other Representative)\*

[Typed Name and Address of Issuer, or Agent]

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(Applicant's Signature)

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(Date)

\*Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve the application of a new preexisting conditions limitation.