

PROGRAM MEMORANDUM INSURANCE COMMISSIONERS INSURANCE ISSUERS

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and Human Services

Centers for Medicare &
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Title: Medigap Bulletin Series

Subject: The Status of Medicare Supplemental Insurance Policies after the TRICARE for Life (TFL) Program is Implemented on 10/01/01

Markets: Medigap

I. Purpose

This bulletin clarifies that the anti-duplication provisions of section 1882(d)(3)(A) of the Social Security Act (the Act) generally would not prevent Medigap issuers from selling, issuing, or renewing a Medigap policy to a Medicare beneficiary who is also entitled to TRICARE for Life (TFL) benefits. This bulletin also explains that TFL in no way relieves Medigap issuers from the requirements of section 1882 of the Act.

II. Background

A. TRICARE

TRICARE, formerly the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), is the United States Department of Defense (DOD) health care program for active and retired members of the uniformed services and their dependents. TFL was created by the National Defense Authorization Act (NDAA) for Fiscal Year 2001, Public Law 106-398. TFL expands TRICARE medical and pharmacy benefits to include uniformed services retirees and their family members age 65 and older who were previously precluded by statute from receiving benefits under TRICARE.¹

The NDAA provides that TFL will be a secondary payer to Medicare for all eligible Medicare-covered military beneficiaries. Under NDAA, beneficiaries eligible for TFL are not precluded from having other supplemental coverage. We anticipate that TFL eligible beneficiaries may elect to keep their current Medigap policies or seek to purchase Medigap policies in the future. However, the DOD has indicated that TFL will pay only after any other supplemental insurance payment has been exhausted. This bulletin only addresses whether issuers of Medigap plans may legally offer or continue coverage for individuals who are eligible for TFL. It does not

provide guidance as to whether purchase or retention of a policy is advisable for any particular individual.

B. Medigap Anti-Duplication Provisions

Section 1882(d) of the Act contains prohibitions against selling health insurance policies to Medicare beneficiaries under certain conditions. Enforcement of the anti-duplication provisions is under the jurisdiction of the Department of Justice (for criminal sanctions) and the Inspector General of the Department of Health and Human Services (for civil money penalties). While CMS cannot make policy decisions with respect to that enforcement, we believe the following discussion of relevant statutory provisions may provide guidance to Medigap issuers and states.

III. Anti-Duplication Rules

The Act prohibits *an issuer or agent* from *issuing or selling* certain types of health coverage to individuals qualified for coverage under Medicare Part A or enrolled in Medicare Part B.ⁱⁱ CMS believes that these provisions would not generally apply to Medigap issuers selling or issuing a Medigap policy to a beneficiary entitled to TFL benefits. For the anti-duplication provisions to apply, one of three conditions must be met. If none of these conditions is met, the anti-duplication rules would not apply.

1. It is generally unlawful to sell or issue a health insurance policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under Medicare or Medicaid. TFL is not a benefit program under either Medicaid or Medicare, but rather a benefit program created by NDAA and administered by DOD.
2. It is also unlawful to sell or issue a policy to a Medicare beneficiary who already has a Medigap policy or who is enrolled in Medicare+Choice (M+C). TFL does not meet the definition of a M+C plan or organization.ⁱⁱⁱ Neither does TFL meet the definition of a Medigap policy. To be classified as a Medigap policy, the policy or plan must be offered by a private entity to Medicare eligible individuals and provide reimbursement for expenses incurred for allowable services and items.^{iv} TFL is offered to qualified, Medicare-eligible military retirees and their family members by DOD, a publicly funded entity within the Federal government.
3. The third condition applies only to the sale of insurance policies or health coverage **other** than Medigap policies.^v Therefore, this clause is not relevant to Medigap issuers.

Because issuing a Medigap policy to a TFL beneficiary does not meet these conditions, CMS believes that issuing or selling a Medigap policy to a beneficiary eligible for benefits under TFL would not be prohibited under the anti-duplication provisions of the Act.

IV. Other Provisions under the Act

Because TFL will only pay after any Medigap or other supplemental benefits pay, beneficiaries eligible for TFL may decide to drop a Medigap policy in order to get maximum use of their TFL benefits. However, a TFL beneficiary is not required to drop his or her Medigap policy.

Also, the availability of TFL does not affect the beneficiary's right to guaranteed renewability of a Medigap policy, nor does it change any other requirement that applies to Medigap issuers under section 1882 of the Act.

Where to get more information:

If you have any questions regarding this Bulletin, contact the Private Health Insurance Group, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration at (410) 786-1565 or via email at phig@cms.hhs.gov.

For additional information on Medigap policies, visit www.medicare.gov.

For additional information on TFL, visit <http://www.tricare.osd.mil/ndaa/> or <http://www.tricare.osd.mil/>

ⁱ Section 1086(d) of Title 10 of the United States Code. The enactment of NDAA FY '01 amended section 1086(d)(2) to specify that a qualified beneficiary enrolled in Medicare Part B would be entitled to benefits under TFL.

ⁱⁱ Section 1882(d)(3) of the Act.

ⁱⁱⁱ 42 CFR 422.2 defines a M+C organization as an entity licensed by a state as a risk-bearing entity and certified by CMS as meeting the M+C contracting requirements that covers health benefits through a contract with CMS, and includes a specific set of benefits at a uniform premium.

^{iv} Section 1882(g)(1) of the Act.

^v Clause (III) of section 1882(d)(3)(A)(i) of the Act.