

# PROGRAM MEMORANDUM INSURANCE COMMISSIONERS INSURANCE ISSUERS

Department of Health  
and Human Services

Health Care Financing  
Administration

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Title: Medigap Insurance Standards Bulletin Series -- INFORMATION

Subject: Rates for Guaranteed Issue Medigap Policies

Market: Medigap

## **I. PURPOSE**

The purpose of this Bulletin is to convey the Health Care Financing Administration's (HCFA's) interpretation of certain statutory requirements of section 1882(s)(3) of the Social Security Act (the Act).

## **II. BACKGROUND**

The Balanced Budget Act of 1997 (BBA) added section 1882(s)(3) of the Act, which provides that when an application is received from an individual described in subsection (s)(3)(B), for the type of policy described in subsection (s)(3)(C),<sup>1</sup> during the period of time specified in subsection (s)(3)(E), the issuer:

(i) may not deny or condition the issuance or effectiveness of a Medicare supplemental policy described in subparagraph [1882(s)(3)](C) that is offered and is available for issuance to new enrollees by such issuer;

(ii) may not discriminate in the pricing of such policy, because of health status, claims experience, receipt of health care, or medical condition; . . . .

While HCFA has commonly referred to the protections conferred by section 1882(s)(3) using the general term "guaranteed issue," that term does not appear in the statute, and does not have legal significance under the language of section 1882. The term "guaranteed issue" simply means that an applicant cannot, or will not, be turned down for a policy just because he or she would not

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<sup>1</sup>This will generally be plans A, B, C or F, although under clauses (v) and (vi) of section 1882(s)(3)(B) it could include a plan the individual previously held, or could include any plans A through J available in the market.

meet underwriting criteria. A particular policy may be provided on a guaranteed issue basis as a result of the issuer's choice; as a result of State law requirements; or as a result of Federal law requirements such as those in section 1882(s).

The NAIC Model (the Model) permits an issuer to sell up to four "types" of any standard Medigap plan -- Individual, Group, Individual SELECT, or Group SELECT -- and section 15C(2) of the Model provides that an issuer may offer, with the approval of the commissioner, up to four additional policy forms for the same type of plan, including the addition of either guaranteed issue or underwritten coverage.

### **III. ISSUE**

A question has arisen with respect to issuers that simultaneously offer both an underwritten form and a guaranteed issue form of a particular Medigap benefit plan, as authorized under Section 15 of the Model. We have been asked whether it is a violation of section 1882(s)(3) of the Social Security Act if an issuer offers a "guaranteed issue" policy approved by the state to every applicant protected under section 1882(s)(3), but refuses to sell these applicants the policy at the underwritten rate. We believe this practice is a violation of the protections contained in section 1882(s)(3).

#### **(1) Basic Guaranteed Issue Requirement**

As noted above, section 1882(s)(3)(A)(i) of the Social Security Act states that the issuer may not deny or condition the issuance of a Medigap policy that is described in section 1882(s)(3)(C), and "that is offered and is available for issuance to new enrollees by such issuer." Since the enactment of the BBA, HCFA has consistently taken the position that this provision only applies to Medigap policies that are actually available in the market. Thus, an issuer that does not offer plan C at all does not have to file a plan C just to offer it to protected individuals. Similarly, an issuer that does not have any policy forms filed for beneficiaries under age 65 does not have to provide policies to those individuals even when they are entitled to protections under section 1882(s)(3).

However, HCFA has clearly interpreted the language of section 1882(s)(3)(A)(i) to mean that if an issuer actively offers any policy form in the market, even if it is generally subject to underwriting, it is considered to be "offered and available for issuance to new enrollees." Therefore, it must be sold to any individual protected under section 1882(s)(3), without underwriting, because the statute states that the issuer cannot "deny or condition the issuance or effectiveness of" the policy.

#### **(2) Nondiscrimination.**

Having established under clause (s)(3)(A)(i) that the person must be sold the policy, clause (s)(3)(A)(ii) establishes that an issuer cannot charge a higher price for the policy, based on health status.<sup>2</sup> The issuer must sell the policy, at the underwritten rate, to all applicants protected under

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<sup>2</sup>Clause (ii) precludes discrimination in the pricing of "such policy," i.e., a policy described in clause (i) that is "offered and is available for issuance to new enrollees."

section 1882(s)(3), and not charge them a higher rate. As a practical matter, this means that the issuer must offer its best rate to any individual with protections under the Federal statute.<sup>3</sup>

The fact that the issuer happens to have filed both an underwritten product and a guaranteed issue product does not change the result. For purposes of the requirements under section 1882(s)(3) of the federal law, **it is irrelevant that one of the policies may be labeled by the issuer, or by State law, as a "guaranteed issue" policy.**

#### **IV. CONCLUSION**

In the event HCFA receives a complaint about an issuer engaging in practices that may constitute a violation of section 1882 of the Social Security Act, we will collaborate with the involved State in investigating the complaint and pursuing any necessary enforcement activity.

#### **Where to get more information:**

If you have any questions regarding this Bulletin, please call the HIPAA Insurance Reform, Medigap, and COBRA Help Line at (410) 786-1565.

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<sup>3</sup> That an issuer must offer its best rate to all individuals protected by open enrollment or guaranteed issue rights has been the consistent policy of HCFA and the NAIC, as evidenced in the NAIC Compliance Manual.