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BULLETIN 23-4

Date: February 22, 2023

To: Carriers Participating in the Medicare Supplement Market in Maryland

Re: Guarantee Issue Period for Certain Eligible Individuals
House Bill 536, Chapter 495, Acts of 2022

The purpose of this Bulletin is to remind carriers that offer individual or group Medicare supplement policies in Maryland of their obligations under Section 2 of House Bill 536, Chapter 495 of the Acts of 2022.

Background

Under § 15-909(b) of the Insurance Article, when an individual who is at least 65 years old first enrolls for benefits under Medicare Part B, the individual is entitled to a six-month open enrollment period during which the individual may apply for a Medicare supplement policy without underwriting. Prior to the federal Public Health Emergency (PHE) for the COVID-19 pandemic, when an individual who was enrolled in Medicaid became eligible for Medicare Part B and no longer satisfied the eligibility requirements for Medicaid, the individual was promptly terminated from the Medicaid program, and would then be able to take advantage of the Medicare supplement open enrollment period under § 15-909(b) of the Insurance Article. However, under the Families First Coronavirus Response Act, which was enacted in 2021, the federal government directed state Medicaid programs, for the duration of the PHE, to cease terminations for most Medicaid enrollees, including those whose coverage would otherwise terminate because they enrolled in Medicare Part B. This federal requirement is known as the continuous enrollment provision.

As a result of the continuous enrollment provision, during the PHE, many individuals have remained covered under Medicaid for more than six months from the effective date of their enrollment in Medicare Part B. Because federal law prohibits carriers from selling Medicare supplement policies to individuals covered under Medicaid, these Medicaid enrollees were not

able to purchase Medicare supplement plans during the open enrollment period required under § 15-909. *See* 42 U.S.C. § 1395ss(d)(3)(B)(iii). For these individuals, once their Medicaid coverage ultimately terminates, they will no longer have a right to enroll in a Medicare supplement policy without underwriting, even though they have maintained comprehensive medical coverage throughout the entire period of time following enrollment in Medicare. Individuals with pre-existing conditions who cannot satisfy a carrier's underwriting requirements, therefore, will be unable to purchase a Medicare supplement policy to assist with the expenses that are not covered in full by Medicare.

On December 29, 2022, the Consolidated Appropriations Act of 2023 was signed into law, which included a provision directing state Medicaid agencies to resume eligibility determinations beginning on April 1, 2023. Although states are permitted to take up to 12 months to fully resume normal eligibility and enrollment operations under Medicaid, the eligibility redeterminations will start to occur in April for some Medicaid enrollees. In anticipation of the federal government ending the continuous coverage provision, the Maryland legislature passed legislation during the 2022 legislative session to protect Maryland consumers. House Bill 536, Chapter 495 of the Acts of 2022 ensures that eligible individuals who missed their Medicare supplement open enrollment period as a result of the continuous coverage provision will have a 63-day period to enroll in a Medicare supplement policy without underwriting, following the later of the date they are terminated from Medicaid or the date they are notified of Medicaid termination.

New Guarantee Issue Requirements for Certain Individuals

Section 2 of House Bill 536, Chapter 495 of the Acts of 2022 requires carriers to issue any Medicare supplement policy the carrier sells in the State to an individual eligible for Medicare if the individual:

1. is enrolled in Medicare Part B while enrolled in the Maryland Medical Assistance Program;
2. remained in the Maryland Medical Assistance Program due to a suspension of terminations by the Maryland Medical Assistance Program during a state of emergency and was not dis-enrolled or terminated until at least 6 months following the effective date of enrollment in Medicare Part B; and
3. applies for the Medicare supplement policy during the 63-day period following the later of the date of termination from the Maryland Medical Assistance Program or the date the individual is notified of termination from the Maryland Medical Assistance Program.¹

¹ In the December 2, 2022 issue of the Maryland Register, a Notice of Final Action was published that the Maryland Insurance Administration had amended regulations .01, .03, and .05 under COMAR 31.10.02 Emergency Powers to implement the changes to Maryland law under House Bill 536, Chapter 495, Acts of 2022. The regulations themselves clearly indicate that the guaranteed issue period must be provided 63 days following the later of notice of termination or disenrollment, or the date of termination from the Maryland Medical Assistance Program. However, the description of the Final Action that appeared in the Maryland Register incorrectly stated that the guaranteed issue period must be provided "63 days after a public health emergency ends."

A carrier may require that the individual submit evidence of the date of termination or disenrollment from the Maryland Medical Assistance Program with the application for a Medicare supplement policy.

With respect to an individual subject to these new guarantee issue requirements, a carrier may NOT:

1. deny or place a condition on the issuance or effectiveness of a Medicare supplement policy that is offered and is available for issuance to new enrollees by the carrier;
2. discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; or
3. impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

Requirements for Medicare Supplement Applications

Application forms for Medicare supplement policies must include the standard required questions included in COMAR 31.10.06.14A. Because these questions do not solicit information that would allow a carrier to determine whether an individual is eligible for the special enrollment period required by House Bill 536, Medicare supplement applications will need to be amended to include a specific question designed to elicit information as to whether an individual is eligible for the new special enrollment period.

Additionally, since a carrier may not direct medical questions to individuals eligible for the special enrollment period, an application for a Medicare supplement policy that includes questions about an applicant's health must include a specific statement that the health questions need not be answered if the applicant is eligible for the new special enrollment period. A general instruction directing the applicant not to answer health questions if they are eligible for a guaranteed issue period is not acceptable. The application must clearly address the circumstances described in House Bill 536 for guarantee issuance of a Medicare supplement policy.

Carriers are required to file revised Medicare supplement application forms to the Maryland Insurance Administration ("Administration") for approval in accordance with applicable form filing requirements. Medicare supplement carriers who have not already filed revised application forms with the Administration to address the requirements of House Bill 536 should do so as soon as possible to ensure they are using applications forms that comply with Maryland law. The Administration expects carriers to comply with the guaranteed issue requirements of House Bill 536 even if a revised application form has not been filed and approved by April 1, 2023.

Questions about this Bulletin may be directed to the Life & Health Division of the Maryland Insurance Administration at 410-468-2170.

KATHLEEN A. BIRRANE
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By: Signature on Original

David Cooney
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Life and Health