

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Medicare Supplement Coverage

Filing Requirements for Policies, Certificates and Premium Rates

Notice to Policyholders of Rate Increases

Adopted Amendment: N.J.A.C. 11:4-23.13

Proposed: February 2, 2004 at 36 N.J.R. 606(a)

Adopted: August 16, 2004 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: August 16, 2004 as R. 2004 d.344, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-5e and 17:29A-53

Effective Date: September 20, 2004

Expiration Date: November 30, 2005

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received written comments from the following: Brian M. Quigley, Regional Director, America's Health Insurance Plans; Jeanne M. Heisler, CPCU, CLU, AAI, AIS, Government Affairs Representative, Independent Insurance Agents & Brokers of New Jersey; and Frank A. Reilly.

COMMENT: One commenter stated that the proposed regulation would require a Medicare Supplement issuer to provide a notice to their policyholders within 10 days of their filing a prior approval rate increase request with the Department. The commenter noted that the notice must follow the form presented in the Appendix to the proposed regulation, indicating to the

policyholder the amount of the proposed rate increase for their policy. The commenter believes that the instructions with respect to the Medicare Supplement coverage in the proposed notice Appendix are unclear and could create confusion. The commenter recommends revising the instructions to clarify that the issuer should list the requested rate increase for that policyholder's policy only.

RESPONSE: The Department notes that the comments about the Appendix relate to the Appendix that was part of new rules at N.J.A.C. 11:1-45 which were adopted on November 19, 2003. Notwithstanding that fact, the Department does not believe the instructions are unclear or could create confusion. If an insurer does not offer certain standard individual policy forms, the notice of the request for rate increase(s) would indicate "not applicable" with respect to those forms.

COMMENT: One commenter recommended that the Department revise the proposed language at N.J.A.C. 11:4-23.13(c) to clarify that the notices are for rate increases relating to the particular insured's policies. The commenter stated that, as written, the regulation and notice instructions could be interpreted to mean that a Medicare Supplement issuer should prepare one notice containing information about every Medicare Supplement product for which they are requesting rate increases, including each standard individual policy form A through J, every non-standard individual policy form and every group policy form, and then send this one uniform notice to each of their Medicare Supplement policyholders.

RESPONSE: The Department feels that the proposed language is clear that only policyholders affected by a particular request for rate increase should receive the notice. For example, group policyholders need not receive a notice of a request for an increase on individual policies, and

vice-versa. Similarly, no notification is necessary to standard individual policyholders of a rate increase request on non-standard policies.

COMMENT: One commenter stated that if the Department did intend that an insurer's rate increase information for all its products be included on one uniform notice, the commenter strongly suggests that the Department not go forward with such intentions. The commenter stated that the reasons for their suggestion were that many Medicare Supplement policyholders do not know what type of policy they own and some do not even understand that it is MediGap or Medicare Supplement insurance. The commenter asserted that including information about many different policies in a letter to a policyholder is likely to create great confusion and cause unnecessary anxiety. The commenter stated that the insured may be unclear what applies to them, they might wonder why information on a large number of policies is being sent to them, they might erroneously think that a rate increase request for a different policy applies to them and that many telephone calls to the Department, the New Jersey Small Health Insurer Plan and to insurers' customer service departments would likely result.

RESPONSE: The Department disagrees. The Appendix to N.J.A.C. 11:1-45 states that the notice should include the rate increase request for all plans for which an increase is requested. In the typical case, the owner of one of the standard plans A through J would receive a notice listing the requested increase for each plan. A company can supplement this required notice with any additional explanation it wishes concerning the impact of the increase request on the particular policyholder, including identifying the plan owned by the particular policyholder.

COMMENT: One commenter stated that, given that the intent of the notice requirement is to stimulate competition in insurance markets, being required to provide information about proposed rate increases in an issuer's other policies is not relevant to a given policyholder. Group and individual purchasers are separate markets. Further, the relevant information for a Medicare Supplement policyholder who is considering switching is "new issue" rate information and underwriting criteria for the same policy type from different insurers. Knowing the "renewal rate" increases proposed by their issuer for its other policies is not helpful even if the policyholder wanted to consider switching from an F policy form to a C policy form with the same insurer, as the issuer's "new issue" rate is the relevant information to such a decision.

RESPONSE: The requirement to provide information on all plans for which an increase is requested is in the Appendix to N.J.A.C. 11:1-45, which has been adopted. The Department does not contend that this information is useful to every recipient. The notice itself is required by statute, and the form of notice specified is uniform and one that can be easily implemented. As stated in the previous response, a company that wants to include additional information (at, in some cases, additional effort and expense) to highlight the information appropriate to a particular policyholder can do so. As was referenced in the summary of the notice of the proposal of this amendment, N.J.S.A. 17:29A-53c requires that the notice be communicated to the named policyholders who use the products or services subject to the rate increase.

COMMENT: One commenter pointed out the lack of parallel implementation of the statute with respect to different insurance lines. The commenter stated that the notice requirement is applied to other insurance lines in a very different manner. For homeowners/renters insurance and for automobile insurance, the insurer is instructed to provide notice of an average rate increase with

an added advisory saying “The impact of the filing on your rates may vary substantially, depending on the terms of your policy and your individual circumstances.” This keeps the information simple, direct and relevant and avoids the information from being lost in the mix of providing information about different policies, which would be confusing to the policyholders covered by the proposed rule here.

RESPONSE: The comment is about N.J.A.C. 11:1-45, which has been adopted. Notwithstanding this, the Department disagrees with the comment. The Department feels that the Appendix to N.J.A.C. 11:1-45 and this amendment are appropriate to Medicare Supplement Coverage and correctly distinguish this line from the other lines. A typical notice would contain the rate increases requested for the 10 or fewer standard plans A through J for which the carrier provides coverage and is requesting an increase. This would include the increase requested for the plan owned by the policyholders. Since rate actions in Medicare supplement rarely, if ever, vary by age, sex, or other factors, the policyholder has exact information about the impact of the increase. Conversely, an average rate increase for all plans accompanied by a disclaimer that the increase will vary by individual would provide little meaningful information to Medicare supplement insurance policyholders unless the increase was the same for all plans.

COMMENT: One commenter suggested that the proposed regulation be adjusted to provide that notice to the consumer be made after the rate filing is adopted. The commenter believes that this would make the information provided to the policyholder more meaningful yet comply with the intent of the Act.

RESPONSE: Upon review, the Department has determined not to change this provision. The amended statute specifically requires that the notice must be communicated by insurers to named

policyholders that use the products and services subject to the overall rate increase within 10 business days after the applicable filing with the Department. Thus, the Legislature has prescribed the information to be supplied and the time within which the notice must be provided. From the plain meaning of the amended statute it is clear that the Legislature intended that consumers be advised of the rate increase request. Notice as suggested by the commentor would not implement this legislative intent. The Department recognizes that changes may occur in the intervening period between the time that the filing is made with the Department and the time when action is ultimately taken or rates are ultimately put into effect. However, the Department has addressed this by providing that the notice make clear that these increases are only proposed, are subject to prior approval by the Department, and ultimately may not be approved for the amount requested, or at all.

COMMENT: One commenter stated that they do not believe that a required notice should be client specific. They believe that certain general information should be contained in a notice approved by the Department to be used by companies seeking, or being granted rate increases. The general information suggested by the commenter is as follows:

- Not all policyholders will see the average increase outlined in this notice. You should not shop for a different policy until you have your specific renewal policy premium. Prior to changing companies, you should discuss various coverage options with your agent/company representative.
- If you shop for coverage, make sure that you understand all of the coverage options that you have under your current policy so that you are obtaining an accurate comparison.
- Understand that if you change companies, you will be subject to the underwriting guidelines of that new company. If you apply for new coverage and you do not meet the underwriting

requirements, your policy premium may be adjusted, the policy may be canceled or your application may be denied.

RESPONSE: The comment presumes that the required notice is client specific. The required notice is not client specific. The required form of notice includes information on rate increases for all plans. The comment suggests that the notice include additional information relating to shopping for new coverage. Such information goes beyond the scope of the statute's requirement. The statute simply requires notice to the consumer. While there is no requirement that the notice contain additional information regarding seeking alternate coverage, as noted above in response to a prior comment, insurers may include additional information in the notice.

COMMENT: One commenter expressed his disdain for the lack of competition in the market for Medicare Supplement policies that exists in New Jersey and his belief that it is based on the reputation of the Department and its unfair system of rate relief behavior. The commenter believes these actions or inactions have caused several insurance companies to leave the State.

RESPONSE: The comment does not address the proposed amendment under consideration, which implements the recently enacted statutory notice requirement.

COMMENT: One commenter stated he would appreciate an opportunity to testify if there were public hearings on this proposal.

RESPONSE: The Department understands the commenter's interest in offering testimony at a public hearing. However, the Commissioner has determined to receive comments only in writing on this matter.

COMMENT: One commenter stated he believes that this proposal is ill conceived and will only promote more anxiety among seniors. The commenter stated that Medicare Supplement companies almost never get requested rate relief in this State and that a notice to policyholders of such a rate request will only be misleading.

RESPONSE: The required notification to policyholders is set forth in the statute. The amendment merely implements the statute. In response to the comment that the proposal is ill-conceived and will promote more anxiety among seniors, the Department feels that anxiety is promoted by rate increases of which an insured has received no prior notice. With respect to the statement that Medicare Supplement companies “almost never get requested rate relief in this State,” rate increases which are eventually approved by the Department are often, but not always, less than the increases originally requested by the carriers. The Department strongly disagrees that a notice of a requested increase, which indicates that the requested increase may be reduced or disapproved by the Department, is misleading.

COMMENT: One commenter suggested that some companies would use the notice that they plan to seek a 50 or 60 percent rate increase to select and trim a company’s book of business. The commenter put forth the possibility that a company which wanted to reduce its Plan C (Disability Plan) exposure, could give a notice that they were seeking a large rate increase fully knowing that there is little or no chance of such an approval, but causing their insureds to seek coverage from other companies.

RESPONSE: The notification is required by statute. This amendment informs carriers of that requirement and the form of notice. This comment points out a potential problem with any notice. The Department notes that there is nothing in present law to preclude voluntary notice by

a carrier of a requested rate increase. Therefore, a carrier that chose to operate in the manner described in the comment could do so whether or not this proposal was adopted. A discussion of what actions the Department might take were a carrier to do so is hypothetical and outside the scope of the proposal.

COMMENT: One commenter apologized for the harsh tone of his comments, but stated that each time the commenter testified or wrote to the Department he was investigated and that he assumed that that pattern has not changed. However, at this point he is willing to put himself at risk again.

RESPONSE: The comment is beyond the scope of this proposal. Nevertheless, while the Department understands the commenter's strong feelings on the issue raised, it states unequivocally that companies and producers are not investigated in retaliation for testifying or writing to the Department. The Department appreciates the time and effort the commenter has taken to express his positions on the proposed amendments.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendment relates to providing notice to the public of applications for Medicare supplement insurance rate increases in this State and is not subject to any Federal requirements or standards.

Full text of the adoption follows:

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