

**FINAL**  
**MEETING OF THE NEW JERSEY UNDER 50 MEDICARE SUPPLEMENT**  
**PROGRAM BOARD**  
February 26, 2019

**Board Members:**

Absent – Aetna (HMO) – Dudley Gerow  
Present – UHC (Med Supp writer) – Steve Kane (Chair)  
Present – Horizon (Contracting Carrier) – Jackie Duddy  
Present – Transamerica (Med Supp writer) – Moshe Nelkin  
Present – Public Rep – Ron Ouellette  
Absent – Public Rep – Pat Walsh  
Present – DOBI Rep – Philip Gennace  
Vacant – AHIP Rep

**Staff Present:**

Ellen DeRosa, Executive Director, IHC/SEH Programs  
Christine Machnowsky, Deputy Ex. Dir., IHC/SEH Programs  
Chanell McDevitt, Deputy Ex. Dir., IHC/SEH Programs  
Rosaria Lenox, Managing Financial Officer, IHC/SEH Programs

**I. Call to order**

The meeting was called to order at 1:30 P.M. in the 11<sup>th</sup> floor conference room at the Department of Banking and Insurance. Most members participated by phone.

**II. Rules of the Medicare Supplement Under 50 (MSU50) Program**

E. DeRosa noted that this meeting is in addition to the regularly-scheduled meetings, following-up on discussions at the January 15, 2019 meeting, and comments and questions arising with respect to the draft amendments to the Medicare Supplement Under 50 Program rules. She further explained that written comments were given to staff following the January meeting, which staff considered along with the discussions at the January meeting when re-drafting the amendments. However, the process raised additional questions that staff believed the Board should consider.

*Issues*

Several additional grammatical and technical corrections were suggested. In addition:

- Within the definition of applicant, it was agreed to remove the statement that the date of application by individuals who are disqualified due to age should be deemed to apply to any application for coverage in the Medicare Supplement 50-64 (MS50+) market. The Board acknowledged that the requirement did not belong in the MSU50 rules, suggesting that it should be in the MS50+ rules instead.<sup>1</sup> There was an acknowledgement that making this change to the MSU50 rules may necessitate a change to the MS50+ rules, too.

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<sup>1</sup> Staff note: The question arose whether a similar statement was in the MS50+ rules (N.J.A.C. 11:4-23B): there is no complementary language. Rather, the MS50+ rules has a definition of applicant that specifies the date of application for MS50+

- The Board agreed to maintain the waiver of the preexisting condition provisions (rather than apply creditable coverage standards) for N.J.A.C. 11:4-23A.6 as currently set forth in the rules. It was pointed out that changing the rules to apply creditable coverage standards across the MSU50 Program would result in separate, less favorable, treatment for this group of people relative to other Medicare Supplement recipients, and it would require administrative adjustments for the Contracting Carrier.
- The Board agreed to adjust the reasonable administrative expense load for the Contracting carrier to 15%, noting that there is no commission being paid on the book of business, multiple actuaries thought 15% acceptable (as opposed to the 25% in the current rules, or the 10% in the proposed draft, which some thought too narrow). It was also noted the Contracting Carrier’s administrative expense reported in the prior several years has hovered around 15%.
- The Board acknowledged that, while its goal is to remain current with respect to the reimbursement of losses to the Contracting Carrier, and recommend payments annually, it is not feasible to write any specific dates into the rules for completion of audits or distribution of funds, because the Board ultimately does not control the timeframes for many of the events required for payments to be made.
- E. DeRosa explained a suggestion to remove Medicaid “premiums” from the assessment base lacks clear statutory authority. She noted the statutory description of the assessment base for the Individual Health Coverage (IHC) Program and the MSU50 Program were similar, but that shortly after the IHC Program came into effect, Medicaid premium was statutorily removed from the determination of market share for the IHC program, while no such similar statutory amendments have ever occurred with respect to the MSU50 program. She suggested making such a change without clear statutory authority might prompt legal action, because removal of Medicaid from the assessment base would shift liabilities – possibly significantly – for the MSU50 losses among carriers.
- The Board briefly discussed whether individuals who are eligible before 1/1/2020 but not enrolled in Part B prior to that date should be permitted open enrollment in the MSU50 Plan C whenever the individual leaves the employer coverage. No decision was made during the meeting. The issue was raised by SHIP staff, who provided a follow-up email about the subject.<sup>2</sup>

### *Process*

E. DeRosa explained the rulemaking process, noting that the Board does not have authority to make rules, only to make recommendations to the Commissioner to propose and adopt rules. She stated that the next step is for staff to revise the current draft consistent with the meeting’s discussions, and send the revised draft to the Department as a recommendation from the MSU50 Board for Department rulemaking.

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coverage shall constitute the date of application for either the MSU50 Program or for coverage in the 65+ Medicare Supplement market if the applicant is determined ineligible for MS50+ coverage due to age.

<sup>2</sup> Staff note: further discussion is provided here for convenience only. Essentially, MACRA states that newly eligible people cannot buy Plan C (defining newly eligible as someone entitled to Part A due to disability or deemed eligible due to ESRD), suggesting that all other people could still buy Plan C if eligible for Medicare Parts A/B prior to 1/1/2020 (even if not enrolled). SHIP would like guidance about Medicare Supplement plan availability for people who were Medicare-eligible prior to 1/1/2020, but continued with employer coverage instead of enrolling in Part B until sometime after 1/1/2020.

E. DeRosa further explained that the duration of the rulemaking process the Department will undertake is a minimum of six months from beginning to completion given the various administrative reviews and approvals, the lag-time between submission of documents for publication and actual publication, and the minimum 60-day comment period for proposals. She noted the Department may wait to propose any rule amendments until enactment of the amendments to the authorizing statutes.

## **VI. Close of Meeting**

*The meeting adjourned at 2:15 P.M.*