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Sequence Number: 09-13-09
Rule ID(s): 44638
File Date (effective date): 09/11/2009
End Effective Date: 03/10/2010

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission: Department of Commerce and Insurance
Division: Insurance
Contact Person: LaCosta Wix, Assistant General Counsel
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

Pursuant to Tenn. Code Ann. § 4-5-208, the Commissioner of the Department of Commerce and Insurance (Department) is authorized to promulgate emergency rules in the event that immediate danger to the public health, safety or welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by this chapter would not adequately protect the public. This rule change is necessary because this Department has become aware of a significant hole in the current regulatory scheme involving Medicare supplement insurance. Currently, persons who are over the age of 65 and were previously eligible for both the state Medicaid program ("TennCare" as it is known in Tennessee) and federal Medicare have no ability to purchase Medicare supplement insurance in the event that they become disenrolled from Medicaid. The Department has noted a recent increase in the number of complaints from citizens who do not have this important coverage available to them, and the Department believes it is highly likely that this issue has affected and will continue to affect many more individuals. At the moment, there exists no option for supplemental coverage for many of these individuals, as traditional Medicare supplement insurance policies are only available for purchase in the six (6) months after a potential policyholder turns sixty-five (65) years old. This particularly vulnerable group of citizens did not elect Medicare supplement insurance at the time of initial eligibility because their coverage needs were being met by Medicaid. These rules would amend the open enrollment period for Medicare supplement insurance policies, allowing the individuals disenrolled from Medicaid to have the opportunity to purchase health care coverage to supplement the benefits they receive through Medicare. Because many of the individuals who are communicating with the Department have already lost coverage, time is of the essence. The Department has the authority to set enrollment standards for Medicare supplemental insurance by rule, and as such, the Department finds it would be to the great detriment of this large population to delay the effective date of these rules by promulgating them through another form of rulemaking, so that these individuals do not have to go any longer without access to this important coverage. It is for the reasons laid out above that the Department finds this emergency rulemaking to be a necessity.

Rule(s) Revised

Chapter Number	Chapter Title
0780-01-58	Medicare Supplement Insurance Minimum Standards
Rule Number	Rule Title
0780-01-58-.13	Open Enrollment

Chapter 0780-01-58
Medicare Supplement Insurance Minimum Standards
Amendments

Rule 0780-01-58-.13 Open Enrollment is amended by deleting the text of Paragraph (1) in its entirety and substituting the following language, so that, as amended, it shall read:

- (1) An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with either:
 - (a) The first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B;
 - (b) September 18, 2009, for an individual who (i) had previously been dually eligible for both Medicare and Title XIX of the Social Security Act (Medicaid), but is involuntarily disenrolled from Title XIX of the Social Security Act (Medicaid) in the period of June 1, 2009 through September 18, 2009, (ii) was 65 years of age or older on the date of disenrollment and (iii) is enrolled for benefits under Medicare Part B; or
 - (c) The first day that an individual is disenrolled from medical assistance under Title XIX of the Social Security Act (Medicaid) and is enrolled for benefits under Medicare Part B, if the individual (i) had previously been dually eligible for both Medicare and Title XIX of the Social Security Act (Medicaid), but is involuntarily disenrolled from Title XIX of the Social Security Act (Medicaid) after September 18, 2009, (ii) is 65 years of age or older on the date of disenrollment, and (iii) is enrolled for benefits under Medicare Part B.

Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this Paragraph without regard to age.

And further amended by deleting Paragraph (2) in its entirety and substituting the following language, so that, as amended, it shall read:

- (2)
 - (a) If an applicant qualifies under Paragraph (1) and submits an application during the time period referenced in Paragraph (1) and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition.
 - (b) If the applicant qualifies under Paragraph (1) and submits an application during the time period referenced in Paragraph (1) and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subparagraph.
 - (c) If the applicant qualifies under subparagraph (1)(b) and submits an application during the open enrollment time period referenced in subparagraph (1)(b), the

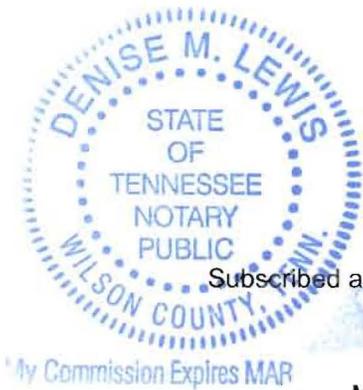
issuer shall not consider the period of time between the date of involuntary disenrollment and September 18, 2009, the effective date of this amendment, to be a break in the period of continuous creditable coverage, and shall calculate the period of creditable coverage as though the individual were submitting an application on the actual date of disenrollment for purposes of excluding benefits on the basis of a preexisting condition.

And further amended by adding a new Paragraph (4), which shall read as follows:

- (4) For an individual described in subparagraph (1)(c), no later than eight (8) calendar days after the effective date of involuntary disenrollment, the appropriate state disenrolling agency shall notify the individual of his or her rights under this Rule and of the obligations of issuers of Medicare supplement policies under this Rule.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-6-112, 56-6-124(a), 56-7-1401 et seq., 56-7-1453, 56-7-1454, 56-7-1455, 56-7-1457, and 56-32-118(a), and Omnibus Budget Reconciliation Act of 1990, Pub L. No. 101-508, (1990), Genetic Information Non Discrimination Act, Pub, L. No.: 110-233 (2008), and Medicare Improvements for Patients and Providers Act, Pub. L. No.: 110-275 (2008).

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.



Date: September 1st 2009

Signature: Leslie A Newman

Leslie A. Newman, Commissioner

Department of Commerce and Insurance

Subscribed and sworn to before me on: 9/1/09

Notary Public Signature: Denise M Lewis

My commission expires on: 3/5/12

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper
Robert E. Cooper, Jr.
Attorney General and Reporter
9-9-09 Date

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2009 SEP 11 PM 11:10
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 9/1/09

Effective for: ~~30~~ 180 *days

Effective through: 3/10/10

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett

Tre Hargett
Secretary of State

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules will require insurance companies who offer Medicare supplement insurance policies to accept applications for the purchase of those policies to people who, if not for this rule, would not be eligible to purchase. The rules achieve this by creating a new open enrollment period of six (6) months for those individuals under the very limited circumstances of those potential policyholders being sixty-five (65) years of age, eligible for Medicare part B, and having been involuntarily disenrolled from Medicaid (TennCare) on or after June 1, 2009.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 56-7-1401 *et seq.* set out the minimum standards for governing of Medicare supplement insurance policies.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All health carriers who offer Medicare supplement insurance policies for sale will be affected by these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None known.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There should be no effect on state and local government revenues.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

LaCosta Wix, Assistant General Counsel

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

LaCosta Wix, Assistant General Counsel

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.