

CR 85-101

STATE OF WISCONSIN  
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DOUGLAS LA FOLLETTE  
SECRETARY OF STATE

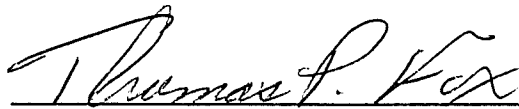
STATE OF WISCONSIN )  
 )  
OFFICE OF THE COMMISSIONER OF INSURANCE )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Thomas P. Fox, Commissioner of Insurance and custodian of the official records of said office, do hereby certify that the annexed order repealing, amending and creating a rule relating to standards for disability insurance sold to the Medicare eligible was issued by this office September 23, 1985.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 23<sup>rd</sup> day of September, 1985.

  
Thomas P. Fox  
Commissioner of Insurance

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SEP 23 1985  
3:55 pm.  
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12-1-85

ORDER OF THE COMMISSIONER OF INSURANCE  
REPEALING, AMENDING AND CREATING A RULE

To repeal Ins 3.39 (13); to amend Ins 3.39 (1)(a), (b) and (c), (2)(a) (intro) 1 and 2, (3)(b), and (d), (4) (title), (intro.), (a) 5, 8 and 9, (c) 5, (5) (title) (intro.), (a) 2, (b) 2 and (c) 2, (6)(title), (a) 2 and 3, (9), (11) and Appendix; to create (3)(dm), (5)(d) and (6)(e).

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ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

The purpose of these amendments is to broaden the scope of the rule to include Medicare replacement policies. These policies are policies sold to Wisconsin residents by federally qualified health maintenance organizations or federally certified competitive medical plans which have entered into a direct risk contract with the federal Health Care Financing Administration to provide health insurance benefits to Medicare beneficiaries. The rule establishes minimum standards and disclosure requirements for Medicare replacement policies. The Commissioner finds that verbatim adherence to the disclosure requirements is necessary because substantial adherence is not sufficient and liberalization of prescribed language will frustrate the purpose of the prescription. It also revises some of the disclosure requirements for Medicare supplement policies. The rule implements and interprets Chapter 609, Stats., as created by 1985 Wisconsin Act 29, ss. 185.983 (1m), 600.03, 625.16, 628.34, 628.38, 631.20, 631.23, 632.73, 632.76 and 632.81, Stats. Sections 185.983 (1m), 600.03, 625.16, 632.73, 632.76 and 632.81 have been amended by 1985 Wisconsin Act 29, to include references to Medicare replacement policies.

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STATE OF WISCONSIN  
RECEIVED AND FILED

SEP 23 1985

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08/15/85

DOUGLAS LA FOLLETTE  
SECRETARY OF STATE

Pursuant to the authority vested in the Commissioner of Insurance by sections 185.983 (1m), 601.41, 628.34, 628.38 and 632.81, Stats., the Commissioner of Insurance hereby repeals, amends and creates sections of Ins 3.39 relating to standards for disability insurance sold to the Medicare eligible. Ins 3.39 interprets ss. 600.03, 609.01 (2) (as created by 1985 Wisconsin Act 29), 625.16, 628.34, 631.20, 631.23, 632.73, 632.76 and 632.81, Stats.

SECTION 1. Ins 3.39 (1) (a), (b) and (c), (2) (a) (intro) 1. and 2., (3) (b) and (d) are amended to read:

Ins 3.39 (1) PURPOSE. (a) This section establishes minimum requirements for disability comprehensive health insurance policies which may be sold to Medicare eligible persons as Medicare Supplement coverage. A policy or certificate ~~will~~ shall be approved by the commissioner as a Medicare supplement under this section if it provides the required coverage and if it contains the designation and caption appropriate to ~~that level~~ the type of coverage provided. A policy or certificate that is designed, structured, or intended as a ~~supplement to~~ Medicare supplement as defined in s. 600.03 (28r), Stats., will shall be disapproved pursuant to s. 631.20, Stats., if that policy does not meet the minimum requirements of any of the 3 levels of coverage for Medicare supplements set out in sub. (5) (a), (b) and (c). A policy or certificate that is designed, structured, or intended as a Medicare replacement policy as defined in s. 600.03(28p), Stats., shall be disapproved pursuant to s. 631.20, Stats., if it does not meet the requirements set out in sub. (5) (d). Disclosure provisions are also established for other disability

policies sold to Medicare eligible persons, because such policies have frequently been represented to, and purchased by, the Medicare eligible as supplements to Medicare.

(b) This section seeks to reduce abuses and confusion associated with the sale of disability insurance to Medicare eligible persons by providing for clearly defined categories ~~of Medicare supplement insurance and~~ reasonable minimum levels of coverage for each category. The disclosure requirements and categories established are intended to provide to Medicare eligible persons guidelines that can be used to compare ~~Medicare supplement~~ disability insurance policies and certificates ~~on the market and~~ to aid them in the purchase of Medicare supplement and Medicare replacement health insurance which is suitable for their needs. This section is designed not only to improve the ability of the Medicare eligible consumer to make an informed choice when purchasing a ~~Medicare supplement policy or certificate, disability insurance,~~ but also to assure the Medicare eligible persons of this state that no policy or certificate will be approved by the commissioner as a "Medicare supplement" or as a "Medicare replacement" unless it contains coverage which warrants the use of that label meets the requirements of this section.

(c) Wisconsin statutes interpreted and implemented by this rule are ss. 185.983 (1m), 600.03, 609.01 (2) (as created by 1985 Wisconsin Act 29), 601.01 (2), 625.16, 628.34 (12), 628.38, 631.20 (2), 631.23, 632.73 (2m), 632.76 (2) (b) and 632.81.

(2)(a) Except as provided in pars. (d) and (e), subs. (4), (5), (6), and (9) apply to any group or individual Medicare supplement policy as defined in s. ~~600.03-(35)-(e)~~ (28r), Stats., or any Medicare replacement policy as defined in s. 600.03 (28p), Stats., including:

1. Any Medicare supplement policy or Medicare replacement policy issued by a voluntary nonprofit sickness care plan subject to ch. 185, Stats.;

2. Any certificate issued under a group Medicare supplement policy or group Medicare replacement policy;

(3) (b) "Medicare eligible persons" includes all persons who qualify for Medicare-by-reason-of-age.

(d) "Medicare supplement coverage" means coverage which meets the definition in s. 600.03-~~(35)-(e)~~ (28r), Stats., as interpreted by sub. (2) (a), and which conforms to subs. (4), (5), and (6).

SECTION 2 Ins 3.39 (3)(dm) is created to read:

Ins 3.39 (3)(dm) "Medicare replacement coverage" means coverage which meets the definition in s. 600.03 (28s), Stats., as interpreted by sub. (2)(a), and which conforms to subs. (4), (5) and (6).)

SECTION 3 Ins 3.39 (4) (title), (intro.), (a) 5, 8 and 9 and (c) 5, (5) (title,)(intro.), (a) 2, (b) 2, and (c) 2 are amended to read:

(4) MEDICARE SUPPLEMENT AND MEDICARE REPLACEMENT POLICY AND CERTIFICATE REQUIREMENTS. No disability insurance policy or certificate comprehended by this section shall relate its coverage to Medicare or be structured, advertised, or marketed as a supplement to Medicare or as a Medicare replacement policy unless:

(a) 5. Does not, if the policy or certificate is "noncancellable", "guaranteed renewable", or "noncancellable and guaranteed renewable", provide for termination of coverage of a spouse solely because of an event specified for termination of coverage of the insured, other than the nonpayment of premium;

8. Provides that benefits designed to cover cost sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors, although there may be a corresponding modification of premiums in accordance with the policy provisions and Ch. 625, Stats. ~~and;~~

9. Prominently discloses any limitations on the choice of providers or geographical area of service and;

(c) 5. Is in the format prescribed in the appendix to this section for the appropriate category;

(5) Ins 3.39 AUTHORIZED MEDICARE SUPPLEMENT AND MEDICARE REPLACEMENT POLICY AND CERTIFICATE DESIGNATIONS, CAPTIONS, AND MINIMUM COVERAGES. For a policy or certificate to meet the requirements of sub. (4), it shall contain the authorized designation, caption and minimum coverage prescribed for one of the following categories ~~of medicare supplement insurance~~. A health maintenance organization as defined in s. ~~628.36(2m)~~ ~~(a)~~ 609.01 (2), Stats., shall place the letters HMO in front of the required designation on any approved Medicare supplement or Medicare replacement policy.

(a) 2. The following caption, except that the word "certificate" may be used ~~in the last 2 sentences~~ instead of "policy", if appropriate: The Wisconsin Insurance Commissioner has set minimum standards for ~~Medicare supplement policies~~ comprehensive health insurance policies sold to the

Medicare eligible. There are three two types. A Medicare supplement 1 offers the most protection. A Medicare supplement 3 offers the least protection. Medicare Supplements and Medicare Replacements. A Medicare Supplement 1 is the most comprehensive Medicare Supplement. A Medicare Supplement 3 is the least comprehensive Medicare Supplement. For an explanation, of the minimum benefits for Medicare Supplements and Medicare Replacements and a comparison of the two types see "Health Insurance Advice for Senior Citizens," given to you when you applied for this policy. Do not buy this policy if you did not get this guide.

(b) 2. The following caption, except that the word "certificate" may be used ~~in the last two sentences~~ instead of "policy", if appropriate: The Wisconsin Insurance Commissioner has set minimum standards for ~~Medicare supplement policies~~ comprehensive health insurance sold to the Medicare eligible. There are three two types. A Medicare supplement 1 offers the most protection. A Medicare supplement 3 offers the least protection. Medicare Supplements and Medicare Replacements. A Medicare Supplement 1 is the most comprehensive Medicare Supplement. A Medicare Supplement 3 is the least comprehensive Medicare Supplement. For an explanation, of the minimum benefits for Medicare Supplements and Medicare Replacements and a comparison of the two types see "Health Insurance Advice for Senior Citizens," given to you when you applied for this policy. Do not buy policy if you did not get this guide.

(c) 2. The following caption, except that the word "certificate" may be used ~~in the last two sentences~~ instead of "policy", if appropriate: The Wisconsin Insurance Commissioner has set minimum standards for ~~Medicare supplement policies~~ comprehensive health insurance sold to the Medicare eligible. There are three two types. A Medicare supplement 1 offers the most protection. A Medicare supplement 3 offers the least protection. Medicare

Supplements and Medicare Replacements. A Medicare Supplement 1 is the most comprehensive Medicare Supplement. A Medicare Supplement 3 is the least comprehensive Medicare Supplement. For an explanation, of the minimum benefits for Medicare Supplements and Medicare Replacements and a comparison of the two types, see "Health Insurance Advice for Senior Citizens," given to you when you applied for this policy. Do not buy this policy if you did not get this guide.

SECTION 4. Ins 3.39 (5) (d) is created to read:

(d) A MEDICARE REPLACEMENT policy or certificate shall include:

1. The following designation: MEDICARE REPLACEMENT POLICY;
2. The following caption, except that the word "certificate" may be used instead of "policy", if appropriate: The Wisconsin Insurance Commissioner has set minimum standards for comprehensive health insurance policies sold to the Medicare eligible. There are two types -- Medicare Supplements and Medicare Replacements. For an explanation of the minimum benefits for Medicare Supplements and Medicare Replacements and a comparison of the two types, see "Health Insurance Advice for Senior Citizens" given to you when you applied for this policy. Do not buy this policy if you did not get this guide.
3. The following minimum coverage: This level of coverage shall at a minimum cover all expenses listed below in addition to basic Medicare benefits.
  - a. The initial deductible under Medicare Part A;
  - b. Medicare Part A eligible expenses for hospitalization, including inpatient psychiatric care, to the extent not covered by Medicare from the 61st to the 90th day, in any Medicare benefit period;



c. Medicare Part A eligible expenses for hospitalization, including inpatient psychiatric care, to the extent not covered by Medicare during use of Medicare's lifetime hospital inpatient reserve days;

d. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days or the maximum coverage for inpatient psychiatric care, all Medicare Part A eligible expenses for hospitalization not covered by Medicare, including inpatient psychiatric care, subject to a lifetime maximum benefit of at least an additional 365 days;

e. Medicare Part A eligible expenses for extended care services in a skilled nursing facility to the extent not covered by Medicare subject to a maximum benefit per Medicare benefit period of at least 365 days; and

f. The initial deductible under Medicare Part B and all Medicare Part B eligible expenses, except outpatient psychiatric care, to the extent not covered by Medicare regardless of hospital confinement.

SECTION 5. Ins 3.39 (6) (title) and (a) 2 and 3 are amended to read:

Ins 3.39 (6) PERMISSIBLE MEDICARE SUPPLEMENT AND MEDICARE REPLACEMENT POLICY OR CERTIFICATE EXCLUSIONS AND LIMITATIONS.

(a) 2. Except for Medicare replacement policies under sub. (5) (d),  
~~Exclude-exclude~~ coverage for the initial deductibles for Medicare Parts A and B;

3. Include any exclusion or condition contained in Medicare, except that Medicare supplements 1 and 2 and Medicare replacement policies shall cover inpatient treatment of mental illness the same as any other illness;

SECTION 6. Ins 3.39 (6)(e) is created to read:

(6) (e) Each insurer which markets a Medicare replacement policy shall have an approved MEDICARE SUPPLEMENT 2 available for all currently enrolled participants at such time as the direct risk contract between the Health Care Financing Administration and the insurer is terminated.

SECTION 7. Ins 3.39 (9) and (11) are amended to read:

Ins 3.39 (9) "HEALTH INSURANCE ADVICE FOR SENIOR CITIZENS" PAMPHLET. Every prospective Medicare eligible purchaser of any policy or certificate subject to this section which provides hospital or medical coverage, other than incidentally, or of any coverage added to an existing Medicare supplement policy or certificate must receive a copy of the current edition of the commissioner's pamphlet "Health Insurance Advice for Senior Citizens" at the time the prospect is contacted by an intermediary or insurer with an invitation to apply as defined in s. Ins 3.27 (5) (g). Except in the case of direct response insurance, written acknowledgement of receipt of this pamphlet shall be obtained by the insurer. This pamphlet prepared by the office of the commissioner of insurance provides information on Medicare and advice to senior citizens on the purchase of Medicare supplement insurance and other health insurance. Insurers may obtain copies information from the ~~commissioner at east~~ commissioner's office on how to obtain copies or may reproduce this pamphlet themselves. This pamphlet shall be periodically revised to reflect changes in Medicare and any other appropriate changes. No insurer shall be responsible for providing applicants the revised pamphlet until 30 days after the insurer has ~~received~~ been given notice that the revised pamphlet is available ~~at the commissioner's office.~~

(11) EXEMPTION OF CERTAIN POLICIES AND CERTIFICATES FROM CERTAIN STATUTORY MEDICARE SUPPLEMENT REQUIREMENTS. Policies and certificates described in sub. (2) (d) of this section, even if they are Medicare supplement policies as defined in s. 600.03-~~(35)~~-~~(e)~~ (28r), Stats., or Medicare replacement policies as defined in s. 600.03 (28p), Stats., shall not be subject to:

SECTION 8. Ins 3.39 (13) is repealed.

SECTION 9. Ins 3.39 APPENDIX is amended to read:

APPENDIX

(COMPANY NAME)

OUTLINE OF MEDICARE

SUPPLEMENT COVERAGE

OF

OUTLINE OF MEDICARE REPLACEMENT COVERAGE

(The designation and caption required by sub. (4) (c) 4.)

- (1) Read Your Policy Carefully -- This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

- (2) (a) A Medicare supplement policy shall contain the following language:

Medicare Supplement Coverage -- Policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and co-payment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing and taking medicine (delete if such coverage is provided).

- (b) A Medicare replacement policy shall contain the following language:

This policy provides basic Medicare hospital and physician benefits. It also includes benefits beyond those provided by Medicare (delete if this is not true). This policy is a replacement for Medicare and is subject to certain limitations in choice of providers and area of service. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing and taking medicine. (delete if such coverage is provided)

- (3) (a) ~~(for intermediaries)~~(for Medicare supplement policies marketed by intermediaries)

Neither (insert company's name) nor its agents are connected with Medicare.

(b) ~~(for direct responses)~~ (for Medicare supplement policies marketed by direct response)

(insert company's name) is not connected with Medicare.

(c) (for Medicare replacement policies)

(Insurer) has contracted with Medicare to provide Medicare benefits. Except for emergency care anywhere or urgently needed care when you are temporarily out of the service area, all services, including all Medicare services, must be provided or authorized by (insurer).

(4) (a) (for Medicare supplement policies, (A-a brief summary of the major benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts, provided by the Medicare supplement coverage in the following order+) described below.)

(b) (For Medicare replacement policies, a brief summary of both the basic Medicare benefits in the policy and additional benefits in the order described below.)

(c) If the coverage is provided by a health maintenance organization as defined in s. 609.01 (2), Stats., the brief summary described below shall include information on coverage for emergency care anywhere and urgent care received outside the service area if this care is treated differently than other covered benefits.

SERVICE	BENEFIT	MEDIGARE PAYS BASIC MEDICARE COVERAGE	THIS POLICY PAYS	YOU PAY
<hr/>				
HOSPITALIZATION...				
semiprivate room and board, general nursing and miscellaneous hospital services and supplies	First 60 days	All but <del>\$(260)</del> ( <u>current deductible</u> )		
	61st to 90th day	All but <del>\$(65)</del> ( <u>current amount</u> ) a day		
	91st to 150th day	All but <del>\$(130)</del> ( <u>current amount</u> ) a day		
Includes meals, special care units, drugs, lab tests, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation services	Beyond 150 days	Nothing		
<hr/>				
POSTHOSPITAL SKILLED NURSING CARE...				
In a facility approved by Medicare, you must have been in a hospital for at least three days and enter the facility within 30 days after hospital discharge.	First 20 days	100% of costs		
	Additional 80 days	All but <del>\$(32-50)</del> ( <u>current amount</u> ) a day		
	Beyond 100 days	Nothing		
<hr/>				
MEDICAL EXPENSE	Physician's services, inpatient and outpatient medical services and supplies at a hospital, physical and speech therapy and ambulance.	80% of reasonable charge [after <del>\$(75)</del> <u>current deductible</u> ]		
<hr/>				

- (5) (Statement that the policy does or does not cover the following:)
- (a) Private duty nursing,
  - (b) Skilled nursing home care costs (beyond what is covered by Medicare),
  - (c) Custodial nursing home care costs,
  - (d) Intermediate nursing home care costs,
  - (e) Home health care above number of visits covered by Medicare,
  - (f) Physician charges (above Medicare's reasonable charge),
  - (g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay),
  - (h) Care received outside of U.S.A.,
  - (i) Dental care of dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
  - (j) Coverage for emergency care anywhere or for care received outside the service area if this care is treated differently than other covered benefits.
- (6) (A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in (4) above, including conspicuous statements:)
- (a) (That the chart summarizing Medicare benefits only briefly describes such benefits.)
  - (b) (That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.)
  - (c) (That there are limitations on the choice of providers or the geographical area served, if this is the case.)
- (7) (A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.)
- (8) ~~If the coverage is provided by a health maintenance organization defined under 57-628-36-(2m)-(a), Stats., the outline of coverage shall prominently disclose all restrictions associated with the use of emergency and urgent care services and information on how to file a claim for services received outside the service area.~~

Information on how to file a claim for services received from non-participating providers because of an emergency in the area or out of the service area shall be prominently disclosed.

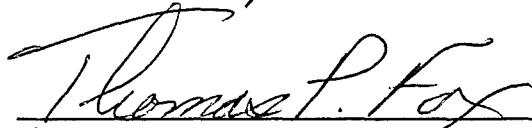
(9) If there are restrictions on the choice of providers, a list of providers available to enrollees shall be included with the outline of coverage.

~~(9)~~(10) (The amount of premium for this policy.)

Drafting Note: The term "certificate" should be substituted for the word "policy" throughout the outline of coverage where appropriate. The outline is subject to s. Ins 3.27 (5) (1) and s. Ins 3.27 (9) (u), (v) and (zh) 2. and 4.

These changes shall become effective on January 1, 1986.

Dated at Madison, Wisconsin, this 23<sup>rd</sup> day of September, 1985.



Thomas P. Fox  
Commissioner of Insurance





The State of Wisconsin  
Office of the Commissioner of Insurance

Thomas P. Fox  
Commissioner  
(608) 266-3585

RECEIVED

SEP 23 1985

DATE: September 23, 1985  
TO: Gary Poulson  
FROM: M. E. Van Cleave  
Assistant Deputy Commissioner of Insurance  
SUBJECT: Ins 3.39, Clearinghouse Number 85-101

Revisor of Statutes  
Bureau

Enclosed are two copies of an Order of the Commissioner of Insurance repealing, amending and creating Ins 3.39 relating to standards for disability insurance sold to the Medicare eligible.

MEV:LH:ams  
Enclosure  
2422s