

**WEST VIRGINIA INFORMATION LETTER**

**NO. 83**

**JULY, 1992**

**TO: ALL INSURANCE COMPANIES LICENSED TO TRANSACT  
ACCIDENT AND SICKNESS INSURANCE IN WEST VIRGINIA AND  
OTHER INTERESTED PARTIES**

**RE: MEDICARE SUPPLEMENT INSURANCE – COMPLIANCE WITH  
STATE AND FEDERAL REQUIREMENTS BASED ON THE OMNIBUS  
BUDGET RECONCILIATION ACT OF 1990 (OBRA '90)**

The purpose of this Informational Letter is to clarify certain state and federal law requirements that insurers marketing Medicare supplement ("Medigap") policies in West Virginia must meet to comply with 1990 amendments to the federal Medicare statutes. The United States Congress passed those amendments as part of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90).

Pursuant to OBRA '90 mandates, the West Virginia Insurance Commissioner initiated various changes last year in existing state Medicare supplement insurance statutes and regulations. Due to a rulemaking deadline imposed by the West Virginia Administrative Procedures Act, the Commissioner's agency-approved emergency rule on Medigap insurance (Series 24) had to be filed with the West Virginia Secretary of State on July 17, 1991. Compliance with that state-law deadline led to certain inconsistencies between the Commissioner's current "Permanent Regulations on Medicare Supplement Insurance" and the final draft of the National Association of Insurance Commissioners (NAIC) Model Regulation adopted July 30, 1991. (The Commissioner's current Medigap regulations were approved by the West Virginia Legislature during its 1992 Regular Session. The final regulations took effect July 20, 1992.)

Several other discrepancies exist between current West Virginia Medicare supplement insurance statutes and the federal Medigap statutes. (This State's Medigap statutes were last amended by House Bill 4666, passed during the 1992 Regular Session of the Legislature and effective July 1, 1992.) Variances in state and federal laws relating to mandated benefits, Medicare SELECT, and non-duplication of Medicare supplement insurance coverage will be discussed in this Informational Letter.

Informational Letter No. 83  
July, 1992

**Mandated Benefits** -- The federal Health Care Financing Administration (HCFA), which administers the Medicare program, has alerted the Insurance Commissioner to the fact that certain differences exist in federal Medicare laws and West Virginia statutes mandating various benefits covered by Medicare supplement insurance. Such state-mandated benefits under West Virginia law include, but are not limited to, benefits for cancer screening mammograms.

In a Memorandum dated March 26, 1992, Director Barbara J. Gagel of the Bureau of Program Operations at HCFA advised all state insurance commissioners that effective January 1, 1991, Medicare provides coverage for the following screening mammography services furnished by qualified suppliers:

- for asymptomatic disabled beneficiaries who are over age 34 but under age 40, Medicare will pay for one screening mammography;
  
- for asymptomatic disabled beneficiaries who are over age 39 but under age 50, Medicare will pay for an annual screening mammography if the woman has a high risk of developing breast cancer, and a biennial screening mammography if she is not in a high risk category;
  
- for asymptomatic disabled beneficiaries who are over age 49 but under age 65, Medicare will pay for an annual screening mammography regardless of the womans risk category;
  
- for asymptomatic beneficiaries who are 65 or older, Medicare will pay for a biennial screening mammography.

No pre-set limitations exist on the frequency of mammograms performed for diagnostic purposes, which are covered by Medicare in the same manner as other diagnostic tests.

In her aforementioned Memorandum, Ms. Gagel of HCFA also stated:

[Medicare] beneficiaries who purchase any standardized Medigap policy will have supplemental coverage for these mammography services, since coverage of the coinsurance portion of all Medicare Part B eligible expenses is a core benefit that must be included in all standardized Medigap policies pursuant to Section 1882 of the [Social Security] Act and the National Association of Insurance Commissioners (NAIC) Model Standards. Insurance coverage for more frequent screening may be purchased through

Informational Letter No. 83  
July, 1992

purchased through standardized packages E and J, which provide coverage for preventive medical care that is not covered by Medicare, up to a maximum of \$120 annually.

The NAIC Model Standards referred to above are incorporated in the Model Regulation on which the West Virginia Insurance Commissioners current Medicare Supplement insurance regulations are based.

Ms. Gagel of HCFA further noted in her March 26, 1992, Memorandum: "To the extent that a State law mandates coverage under all Medicare supplemental policies of a particular item or service that is not included in the core group of basic benefits, application of the State law would accordingly preclude Federal approval of the States regulatory program. . . ." To obtain federal approval of West Virginias Medicare supplement insurance regulatory program, the Insurance Commissioner hereby acknowledges that to the extent there is any conflict between state-mandated health care benefits and provisions of the federal Medicare law, the federal law will prevail over state statutes. Therefore, insurers marketing Medigap policies in this State must comply with the ten standardized benefit packages set forth in the July 30, 1991 NAIC Model Regulation, which incorporates OBRA '90 standards, notwithstanding any state statutes mandating additional or different health care benefits.

The Insurance Commissioner has statutory authority to approve all policy forms that Medicare supplement insurers seek to market in West Virginia. The Commissioner will not approve any Medigap policy forms requiring or permitting the inclusion of health care benefits other than the ten aforementioned standardized benefit packages, except as provided in Section 6.4(K) (relating to new or innovative benefits) of his current regulations on Medigap insurance.

**Medicare SELECT** -- Due to state-law rulemaking deadlines, the Insurance Commissioners "Permanent Regulations on Medicare Supplement Insurance" had to be filed with the West Virginia Secretary of State prior to HCFA designating which 15 states would participate initially in the Medicare SELECT program. In case West Virginia was selected as one of the first Medicare SELECT states, the Insurance Commissioners current Medigap regulations include Medicare SELECT provisions in Section 8. However, West Virginia was not chosen as one of the initial Medicare SELECT jurisdictions. Therefore, the Medicare SELECT provisions included in the Insurance Commissioners "Permanent Regulations on Medicare Supplement Insurance" **will not be effective** unless and until West Virginia is actually designated as a Medicare SELECT state.

Informational Letter No. 83  
July, 1992

**Non-Duplication of Medicare Supplement Insurance Coverage** -- Section 18.2 of the Insurance Commissioners current "Permanent Regulations on Medicare Supplement Insurance" states: "Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited: **provided, however, that additional Medicare supplement coverage may be sold if when combined with that individuals health coverage already in force, it would insure no more than 100% of the individuals actual medical expenses covered under the combined policies.**" This proviso, highlighted herein in boldface type, was included in an early draft of the NAIC Model Regulation on Medigap insurance. However, it was stricken from the final version of the Model Regulation adopted by the NAIC on July 30, 1991.

HCFA has advised the West Virginia Insurance Commissioner that enforcement of the above-quoted proviso language would violate anti-duplication of coverage provisions in the federal Medicare laws. **Therefore, no Medicare supplement insurance policy or certificate which duplicates existing coverage may be sold in West Virginia,** notwithstanding the proviso to the contrary contained in Section 18.2 of the Insurance Commissioners current Medicare supplement insurance regulations.

The Insurance Commissioner will undertake legislative and rulemaking efforts as soon as possible to remedy the aforementioned discrepancies in state and federal laws relating to Medigap insurance. **Effective immediately, however, and until further notice, the Commissioner will enforce West Virginia statutory and regulatory provisions on mandated benefits, Medicare SELECT, and non-duplication of Medicare supplement insurance coverage as outlined in this Informational Letter.**

Questions concerning this Informational Letter should be directed to B. Keith Huffman, General Counsel, Office of the Insurance Commissioner, 2019 Washington Street, East, Post Office Box 50540, Charleston, WV 25305-0540, (Telephone: 304/558-0401).

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INSURANCE COMMISSIONER