



WEST VIRGINIA INSURANCE BULLETIN No. 23-05

Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.

► Medicare Supplement Guaranteed Issue Eligibility ◀

Pursuant to the Medicaid continuous enrollment requirement in place during the federal public health emergency (PHE), West Virginians enrolled in Medicaid as of March 2020 remained covered by Medicaid during the PHE regardless of eligibility changes. This Medicaid eligibility lasted through, at least, April 1, 2023, when the continuous enrollment provision ended. As of February 1, 2023, the Centers for Medicare and Medicaid Services (CMS) began allowing states to resume Medicaid eligibility reviews. “Medicaid Unwinding” is the process by which states resume regular Medicaid eligibility renewals for all enrollees. The West Virginia Department of Health and Human Resources’ Bureau for Medical Services (BMS) has recently recommenced eligibility reviews and begun termination of Medicaid enrollment for individuals who are not currently eligible.

Generally, persons who become eligible for Medicare receive a Medicare supplement open enrollment period of six (6) months. During the six (6) month open enrollment period, insurers are required to offer guaranteed issue rights to all applicants and are prohibited from discriminating in the pricing of Medicare supplement policies due to applicant health status. However, insurers are prohibited from selling Medicare supplement policies to individuals who are on Medicaid pursuant to 42 U.S.C. § 1395ss(d)(3)(B)(iii). As such, Medicare eligible West Virginians who were continuously enrolled in Medicaid during the PHE, and who enrolled in Medicare Part B more than six (6) months before their Medicaid eligibility ended, may have missed their opportunity under W. Va. Code St. Rules § 114-24-9 to purchase a Medicare supplement policy or certificate with guaranteed issue rights during their initial six (6) month open enrollment period.

To ensure low and moderate income West Virginia seniors have access to affordable Medicare supplement policies or certificates that they could have obtained if not for the PHE and the associated Medicaid continuous enrollment period, the West Virginia Offices of the Insurance Commissioner (“OIC”) is requesting that all health insurers writing Medicare supplement business in this State offer guaranteed issue rights to new applicants who have exhausted or nearly exhausted their initial open enrollment period as a result of their continued enrollment in Medicaid. A health insurer may ask the applicant to show verification of a West Virginia Medicaid eligibility change.

The OIC encourages health insurers to treat these Medicare supplement applicants as “eligible persons” pursuant to W. Va. Code St. Rules § 114-24-10 and extend guaranteed issue rights to allow these applicants to enroll in any available Medicare supplement policy or certificate for the longer of: (1) sixty-three (63) days

starting on the date of a Medicaid eligibility change; or (2) the end of their initial open enrollment period. Pursuant to W. Va. Code St. Rules § 114-24-9, insurers shall not discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant. Preexisting condition exclusion periods should be credited for continuous periods of creditable coverage.

Because these applicants were enrolled in both Medicaid and Medicare during their initial open enrollment period, this approach will most closely match the intent of Medicare supplement rules related to other insurance coverage under W. Va. Code St. Rules § 114-24-1 *et seq.*

Please email any questions concerning this Insurance Bulletin to OICBulletins@wv.gov.

Issued: June 13, 2023



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