

June 6, 2024

Commissioner Scott Kipper, Chair
Senior Issues Task Force

Commissioner Peni Teo, Vice-Chair
Senior Issues Task Force

Re: Medigap Guarantee Issue for “other exceptional circumstances” Due to Provider Withdrawals from Medicare Advantage Plans

Dear Commissioners Kipper and Commissioner Teo:

The undersigned NAIC consumer representative write to ask that the Senior Issues Task Force request the Secretary of HHS to activate a "sleeping" Medigap guarantee issue protection that is in the existing NAIC Model Medigap Regulation which is also the federal minimum standard. That provision in NAIC Model Section 12.B(2)(e) establishes Medigap guarantee issue where an individual "meets exceptional conditions as the Secretary may provide." In light of the rapid departure of providers from Medicare Advantage (MA) networks recently, we believe the “exceptional conditions” standard has been met, and the Secretary and NAIC have a duty to provide consumers with Medigap guaranteed issue.

During the 2023 Annual Enrollment Period (AEP) the Health Insurance Counseling and Advocacy Program (HICAP) in California and the State Health Insurance Assistance Programs (SHIP) around the country counseled many MA members whose health care providers had terminated their relationship with MA plans. In one Southern California County alone the termination of MA contracts by a large health care provider affected more than 32,000 Medicare beneficiaries.

MA plan members who wanted to return to Original Medicare did not have a Special Enrollment Period (SEP) to return to Original Medicare and therefore were not guaranteed the right to a Medigap under federal law, or under most state laws. They are now trapped in the MA system and struggling to find new providers who will accept their MA plan. While federal law explicitly provides a SEP in certain specific circumstances, it’s unclear if current policy provides that protection to consumers when health care providers choose to end their contract with an MA plan.

The Centers for Medicare and Medicaid Services (CMS) has the legal authority to establish SEPs when an individual or group of individuals meets exceptional conditions specified by CMS. In 2023 CMS updated the guidance in the Medicare Managed Care Manual for Special Enrollment Periods (SEP) including “other exceptional circumstances.”¹ In the Manual under Election Periods and Effective dates, 30.4, 4: 21. SEP for Other Exceptional Circumstances 422.62(b)(27)² could apply to situations in which health care providers or large medical systems choose to leave a MA plan at any time during a plan year.

The NAIC Model Regulation to Implement Medicare Supplement Insurance Minimum Standards Model Act seems to provide a Medigap guaranteed issue right in a situation where a SEP for exceptional circumstances is granted.

¹ <https://www.cms.gov/files/document/cy-2024-ma-enrollment-and-disenrollment-guidance.pdf>

² Medicare Managed Care Manual, Chapter 2 - Medicare Advantage Enrollment and Disenrollment; (Updated: August 15, 2023)

Section 12 (A) addresses Guaranteed Issue; (B) describes eligible persons; and (e) references exceptional conditions. While the language in Section 12 is not in the federal statutory text it is certainly approved as the federal minimum standard.

According to recent press reports nearly half of health care providers, even large health systems, may be ending or considering ending their contracts with MA plans³ an action that would leave their patients with few options. A growing number of MA plan members are likely to face the loss of their medical providers, and find themselves trapped in the MA plan system and unable to return to Original Medicare without Medigap guaranteed issue protection.

Considering the current wave of health care providers terminating their contracts with MA plans we respectfully urge the Task Force to request that CMS outline how exceptional circumstances can apply to the loss of medical providers who leave MA plans. This guidance would assist states and SHIPs as they help MA plan members find alternative coverage when faced with this challenging situation.

In addition, we also request that the Task Force clarify the Model Regulation language in Section 12 with a drafting note to ensure that Medicare beneficiaries can make a seamless transition from one health insurance benefit system to another when their health care providers end their relationship with the member's MA plan.

We respectfully request the Task Force to consider encouraging CMS to apply the SEP for other exceptional conditions to the loss of medical providers and consider a drafting note in Model 651 to help Medicare beneficiaries qualify for alternative coverage and retain access to their medical providers and maintain access to uninterrupted medical care. If you have any questions please contact Bonnie Burns at bburns@cahealthadvocates.org

Sincerely,

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³ <https://www.beckershospitalreview.com/finance/nearly-half-of-health-systems-are-considering-dropping-ma-plans.html>