

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #8

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

DATE EMERGENCY RULE WAS ORIGINALLY FILED: January 18, 1991

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

No

DATE OF FIRST EMERGENCY AMENDMENT: Not applicable

SERIES NUMBER OF RULE: 24 TITLE OF RULE Permanent Regulations  
to Implement Changes in Medicare Supplement Insurance to Conform to Medicare  
Catastrophic Coverage Repeal Act of 1989

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS  
EMERGENCY AMENDMENT BECOMES EFFECTIVE UPON FILING.

  
Hanley C. Clark  
Insurance Commissioner

SEE ATTACHMENT

6.60

First Emergency Amendment to Emergency Rule of the Insurance Commissioner, Series 24, Permanent Regulations to Implement Changes in Medicare Supplement Insurance to Conform to Medicare Catastrophic Coverage Repeal Act of 1989

Emergency Rule of the Insurance Commissioner, Series 24, Permanent Regulations to Implement Changes in Medicare Supplement Insurance to Conform to Medicare Catastrophic Coverage Repeal Act of 1989, is amended on an emergency basis as follows:

(1) All strike-throughs and underscoring in Section 8 on page 12, in Section 10 on page 14, and Section 12 on page 26 are to be deleted.

(2) The following portion of the chart entitled "[COMPANY NAME] OUTLINE OF MEDICARE SUPPLEMENT COVERAGE AND PREMIUM INFORMATION" beginning on page 17 was inadvertently omitted and is to be inserted following page 17 as new page 18:

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].

3. (a) [for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

(b) [for direct responses:]

[insert company's name] is not connected with Medicare.

4. [A brief summary of the major medical benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles, as appropriate), provided by the Medicare supplement coverage in the following order:]

	THIS POLICY PAYS**	YOU PAY
DESCRIPTION		
I. Minimum Standards		
SERVICE		

PART A

INPATIENT HOSPITAL SERVICES:

Semi-Private Room & Board

Miscellaneous Hospital Services  
& Supplies, such as Drugs,  
X-Rays, Lab Tests & Operating Room

BLOOD

PART B

MEDICAL EXPENSE:

Services of a Physician/  
Outpatient Services

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WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

CHAPTER 33-28  
SERIES 24

PERMANENT REGULATIONS TO IMPLEMENT CHANGES  
IN MEDICARE SUPPLEMENT INSURANCE TO CONFORM TO  
MEDICARE CATASTROPHIC COVERAGE REPEAL ACT OF 1989

- Section 1. General
- Section 2. Definitions
- Section 3. Policy Definitions and Terms
- Section 4. Prohibited Policy Provisions
- Section 5. Benefit Conversion Requirements During Transition
- Section 6. Minimum Benefit Standards
- Section 7. Standards for Claims Payment
- Section 8. Loss Ratio Standards
- Section 9. Filing Requirements for Out-of-State Group Policies
- Section 10. Permitted Compensation Arrangements
- Section 11. Required Disclosure Provisions
- Section 12. Requirements for Application Forms and Replacement Coverage
- Section 13. Filing Requirements for Advertising
- Section 14. Standards for Marketing
- Section 15. Appropriateness of Recommended Purchase and Excessive Insurance
- Section 16. Reporting of Multiple Policies
- Section 17. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates
- Section 18. Separability
- Appendix Notice Form

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INSURANCE COMMISSIONER

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

CHAPTER 33-28  
SERIES 24

PERMANENT REGULATIONS TO IMPLEMENT CHANGES  
IN MEDICARE SUPPLEMENT INSURANCE TO CONFORM TO  
MEDICARE CATASTROPHIC COVERAGE REPEAL ACT OF 1989

Section 1. General

1.1 Purpose - The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare by reason of age.

1.2 Authority - West Virginia Code §33-28-5b, §33-2-10, §33-11-7, §33-16-3d, §33-24-4, §33-25A-8 and §33-25A-20.

1.3 Filing Date -

1.4 Effective Date -

1.5 Scope and Applicability - This regulation shall supercede the previous Series 24 of the Rules and Regulations of the West Virginia Insurance Commissioner titled "Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Repeal of Medicare Catastrophic Coverage Act," filing and effective date December 29, 1989, and such other regulations of the commissioner to the extent that they are inconsistent with the provisions hereof. Except as otherwise specifically provided, this regulation shall apply to:

(A) All Medicare supplement policies and subscriber contracts delivered or issued for delivery in this State or which are otherwise subject to the jurisdiction of this State on or after the effective date hereof, and

(B) All certificates issued under group Medicare supplement policies or subscriber contracts, which certificates have been delivered or issued for delivery in this State.

(C) This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

## Section 2. Definitions

### 2.1 "Applicant" means:

(A) in the case of an individual Medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits, and

(B) in the case of a group Medicare supplement policy or subscriber contract, the proposed certificateholder.

2.2 "Certificate" means any certificate issued under a group Medicare supplement policy, which certificate has been delivered or issued for delivery in this State.

2.3 "Commissioner" means the Insurance Commissioner of the State of West Virginia.

2.4 "Medicare Supplement Policy" means a group or individual policy of [accident and sickness] insurance or a subscriber contract [of hospital and medical service associations or corporations or health maintenance organizations] which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age.

## Section 3. Policy Definitions and Terms

3.1 No insurance policy or subscriber contract may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy unless such policy or subscriber contract contains definitions or terms which conform to the requirements of this section.

3.2 "Accident," "Accidental Injury," or "Accidental Means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(A) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided" means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force.

(B) Such definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

3.3 "Benefit Period" or "Medicare Benefit Period" shall not be defined as more restrictive than as that defined in the Medicare program.

3.4 "Convalescent Nursing Home," "Extended Care Facility," or "Skilled Nursing Facility" shall be defined in relation to its status, facilities and available services.

(A) A definition of such home or facility shall not be more restrictive than one requiring that it:

- (1) be operated pursuant to law;
- (2) be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;
- (3) be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;
- (4) provide continuous twenty-four (24) hours a day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and
- (5) maintain a daily medical record of each patient.

(B) The definition of such home or facility may provide that such term not be inclusive of:

- (1) any home, facility or part thereof used primarily for rest;
- (2) a home or facility for the aged or for the care of drug addicts or alcoholics; or

(3) a home or facility primarily used for the care and treatment of mental diseases or disorders, or custodial or educational care.

3.5 "Health Care Expenses" means expenses of health maintenance organizations associated with the delivery of health care services which are analogous to incurred losses of insurers.

Such expenses shall not include:

- (A) home office and overhead costs;
- (B) advertising costs;
- (C) commissions and other acquisition costs;
- (D) taxes;
- (E) capital costs;
- (F) administrative costs; or
- (G) claims processing costs.

3.6 "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

(A) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

(1) be an institution operated pursuant to law, and;

(2) be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic and major surgical facilities (except an accredited institution for the treatment of chronic diseases) for the medical care and treatment of sick or injured persons on an inpatient basis for which charge is made; and

(3) provide twenty-four (24) hour nursing service by or under the supervision of registered graduate professional nurses (R.N.s).

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(B) The definition of the term "hospital" may state that such term shall not be inclusive of:

(1) convalescent homes, convalescent, rest or nursing facilities; or

(2) facilities primarily affording custodial, educational or rehabilitory care; or

(3) facilities for the aged, drug addicts or alcoholics.

3.7 "Medicare" shall be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

3.8 "Medicare Eligible Expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims.

3.9 "Mental or Nervous Disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

3.10 "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse," or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the State.

3.11 "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all

providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

3.12 "Sickness" shall not be defined to be more restrictive than the following:

"Sickness" means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force. The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

#### Section 4. Prohibited Policy Provisions

4.1 No insurance policy or subscriber contract may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy if such policy or subscriber contract limits or excludes coverage by type of illness, accident, treatment or medical condition, except as follows:

(A) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

(B) mental or emotional disorders, alcoholism and drug addiction;

(C) illness, treatment or medical condition arising out of:

(1) war or act of war (whether declared or undeclared); participation in a felony, riot or insurrection; service in the armed forces or units auxiliary thereto;

(2) suicide (sane or insane), attempted suicide or intentionally self-inflicted injury;

(3) aviation;

(D) cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part;

(E) care in connection with the detection and correction by manual or mechanical means of structural

imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effect thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column;

(F) benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services rendered by employees of hospitals, laboratories or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

(G) dental care or treatment;

(H) eyeglasses, hearing aids and examination for the prescription or fitting thereof;

(I) rest cures, custodial care, transportation and routine physical examinations;

(J) territorial limitations outside the United States;

provided, however, supplemental policies may not contain, when issued, limitations or exclusions of the type enumerated in Subsections (A), (E), (I), or (J) above that are more restrictive than those of Medicare. Medicare supplement policies may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.

4.2 No Medicare supplement policy may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

4.3 The terms "Medicare Supplement," "Medigap" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

4.4 No Medicare supplement insurance policy, contract or certificate in force in the State shall contain benefits which duplicate benefits provided by Medicare.

## Section 5. Benefit Conversion Requirements During Transition

5.1 Effective January 1, 1990, no Medicare supplement insurance policy, contract or certificate in force in this State

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shall contain benefits which duplicate benefits provided by Medicare.

5.2 Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.

5.3 For Medicare supplement policies subject to the minimum standards adopted by the states pursuant to Medicare Catastrophic Coverage Act of 1988, the minimum benefits shall be:

(A) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(B) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(C) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(D) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(E) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part A;

(F) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [\$75];

(G) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

## Section 6. Minimum Benefit Standards

6.1 No insurance policy or subscriber contract may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy which does not meet the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(A) General Standards. The following standards apply to Medicare supplement policies and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy may not deny a claim for losses incurred more than six (6) months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(2) A Medicare supplement policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premium modifications to correspond to such changes are permissible subject to prior approval of the commissioner. Any such proposed premium modifications shall be filed with the commissioner in compliance with procedures applicable to accident and sickness filings generally and with other applicable sections of these regulations.

(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(a) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(5) (a) Except as authorized by the commissioner, an insurer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph 5(d), the insurer shall offer certificateholders an individual Medicare supplement policy. The insurer shall offer the certificateholder at least the following choices:

(1) an individual Medicare supplement policy which provides for continuation of the benefits contained in the group policy; and

(2) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards.

(c) If membership in a group is terminated, the insurer shall:

(1) offer the certificateholder such conversion opportunities as are described in Paragraph 5(b); or

(2) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(B) Minimum Benefit Standards.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [\$75];

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

(C) Medicare Eligible Expenses.

Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims.

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## Section 7. Standards for Claims Payment

7.1 Every entity providing Medicare supplement policies or contracts shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).

7.2 Compliance with the requirements set forth in Subsection 7.1 above must be certified on the Medicare supplement insurance experience reporting form.

## Section 8. Loss Ratio Standards

8.1 Medicare supplement policies shall return to policyholders in the form of aggregate benefits under the policy, for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices:

(A) At least 80 percent of the aggregate amount of premiums earned in the case of group policies, and

(B) At least 70 percent of the aggregate amount of premiums earned in the case of individual policies.

All filings of rates and rating schedules shall demonstrate that actual and expected losses in relation to premiums comply with the requirements of this section.

(C) Every entity providing Medicare supplement policies in this State shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.

For the purposes of this section, policy forms shall be deemed to comply with the loss ratio standards if: (i) for the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates which have been in force for three years or more is greater than or equal to the applicable percentages contained in this section; and (ii) the expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of

this section. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years.

(D) As soon as practicable, but prior to the effective date of Medicare benefit changes, every insurer, health care service plan or other entity providing Medicare supplement insurance or contracts in this State shall file with the commissioner, in accordance with the applicable filing procedures of this State:

(1) (a) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Such supporting documents as necessary to justify the adjustment shall accompany the filing; and

(b) Every insurer, health care service plan or other entity providing Medicare supplement insurance or benefits to a resident of this State pursuant to this regulation shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer, health care service plan or other entity for such Medicare supplement insurance policies or contracts. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplications with Medicare. Any such riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or contract.

#### Section 9. Filing Requirements for Out-of-State Group Policies

9.1 Every insurer providing group Medicare supplement insurance benefits to a resident of this State pursuant to this regulation shall file a copy of the master policy and any certificate used in this State in accordance with the filing requirements and procedures applicable to group Medicare

supplement policies issued in this State; provided, however, that no insurer shall be required to make a filing earlier than thirty (30) days after insurance was provided to a resident of this State under a master policy issued for delivery outside this State.

#### Section 10. Permitted Compensation Arrangements

10.1 An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no greater than the commission or other compensation paid for selling or servicing the policy or certificate during each of the next four years or periods of the policy.

10.2 Beginning with the sixth year or period of the policy or certificate and for each year or period thereafter, the agent or producer shall receive no commission or compensation other than a maximum five percent (5%) maintenance or service fee per policy year or period.

10.3 No entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies or certificates if an existing policy or certificate is replaced unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy.

10.4 For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finder's fees.

#### Section 11. Required Disclosure Provisions

##### 11.1 General Rules.

(A) Medicare supplement policies shall include a renewal or continuation provision. The language or

specifications of such provision must be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy.

(B) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(C) A Medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(D) If a Medicare supplement policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy, be labeled as "Preexisting Condition Limitations," and be placed on the first page of the policy.

(E) Medicare supplement policies or certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(F) Insurers issuing accident and sickness policies, certificates or subscriber contracts which provide hospital or

medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person(s) eligible for Medicare by reason of age shall provide to all applicants a Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration. Delivery of the Buyer's Guide shall be made whether or not such policies, certificates or subscriber contracts are advertised, solicited or issued as Medicare supplement policies as defined in this regulation. Except in the case of direct response insurers, delivery of the Buyer's Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Buyer's Guide shall be obtained by the insurer. Direct response insurers shall deliver the Buyer's Guide to the applicant upon request but not later than at the time the policy is delivered.

#### 11.2 Notice Requirements.

(A) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, every insurer, health care service plan or other entity providing Medicare supplement insurance or benefits to a resident of this State shall notify its policyholders, contract holders and certificateholders of modifications it has made to Medicare supplement insurance policies or contracts in a format acceptable to the commissioner or in the format prescribed in the Appendix if no other format is prescribed by the commissioner. Such notice shall:

(1) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or contract, and

(2) Inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(B) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(C) Such notices shall not contain or be accompanied by any solicitation.

#### 11.3 Outline of Coverage Requirements for Medicare Supplement Policies.

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Series 24, Sec. 11  
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(A) Insurers issuing Medicare supplement policies or certificates for delivery in this State shall provide an outline of coverage to all applicants at the time application is made and, except for direct response policies, shall obtain an acknowledgment of receipt of such outline from the applicant; and

(B) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(C) The outline of coverage provided to applicants pursuant to Paragraphs (1) and (2) shall be in the form prescribed below:

[COMPANY NAME]  
OUTLINE OF MEDICARE  
SUPPLEMENT COVERAGE  
AND PREMIUM INFORMATION

Use this outline to compare benefits and premiums among policies.

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. 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 copayment provisions which may be in addition to those

Insurance Commissioner  
Leg. Rule 33-28  
Series 24, Sec. 11  
EMERGENCY

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].

3. (a) [for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

(b) [for direct responses:]

[insert company's name] is not connected with Medicare.

4. [A brief summary of the major medical benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles, as appropriate), provided by the Medicare supplement coverage in the following order:]

	THIS POLICY PAYS**	YOU PAY
<u>DESCRIPTION</u>		
I. Minimum Standards		
SERVICE		
<u>PART A</u>		
INPATIENT HOSPITAL SERVICES:		
Semi-Private Room & Board		
Miscellaneous Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room		
BLOOD		
<u>PART B</u>		
MEDICAL EXPENSE:		
Services of a Physician/ Outpatient Services		

Insurance Commissioner  
Leg. Rule 33-28  
Series 24, Sec. 11  
EMERGENCY

THIS POLICY  
PAYS\*\*

YOU PAY

DESCRIPTION

---

Medical Supplies other than  
Prescribed Drugs

BLOOD

MISCELLANEOUS

Immunosuppressive Drugs

II. Additional Benefits

PART A

Part A Deductible

Private Rooms

In-Hospital Private Nurses

Skilled Nursing Facility Care

PARTS A & B

Home Health Services

PART B

Part B Deductible

Medical Charges in Excess of  
Medicare Allowable Expenses  
(Percentage Paid)

OUT-OF-POCKET MAXIMUM

PRESCRIPTION DRUGS

Insurance Commissioner  
Leg. Rule 33-28  
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EMERGENCY

DESCRIPTION	THIS POLICY PAYS**	YOU PAY
-------------	-----------------------	---------

MISCELLANEOUS

Respite Care Benefits

Expenses Incurred in  
Foreign Country

Other:

TOTAL PREMIUM

\$ \_\_\_\_\_

IN ADDITION TO THIS OUTLINE OF COVERAGE, [INSURANCE COMPANY NAME] WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

\*\*If this policy does not provide coverage for a benefit listed above, the insurer must state "no coverage" beside that benefit in the first column.

5. [The following chart shall accompany the outline of coverage:]

Insurance Commissioner  
 Leg. Rule 33-28  
 Series 24, Sec. 11  
 EMERGENCY

[COMPANY NAME]

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE - 1990

THE FOLLOWING CHART BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	<u>In 1989 Medicare Pays Per Calendar Year</u>	<u>Effective January 1, 1990, Medicare Will Pay</u>	<u>In 1989 Your Coverage Pays</u>	<u>Effective January 1, 1990, Your Coverage Will Pay</u>
MEDICARE PART A SERVICES AND SUPPLIES				
Inpatient Hospital Services	Unlimited number of hospital days after \$560 deductible	All but \$592 for first 60 days/benefit period		
Semi-Private Room & Board		All but \$148 a day for 61st-90th days/benefit period		
Misc. Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room		All but \$296 a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)		
BLOOD	Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each calendar year		

Insurance Commissioner  
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SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	In 1989 Medicare Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay	In 1989 Your Coverage Pays	Effective January 1, 1990, Your Coverage Will Pay
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit	100% of costs for first 20 days (after a 3 day prior hospital confinement)/ benefit period		
	First 8 days - All but \$25.50 a day	All but \$74.00 a day for 21st-100th days/benefit period		
	9th through 150th day - 100% of costs	Beyond 100 days - Nothing/benefit period		
	Beyond 150 days - Nothing			
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after \$75 deductible)	80% of allowable charges (after \$75 deductible/ calendar year)		
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for immuno- suppressive drugs during the first year following a covered trans- plant (after \$75 deductible/ calendar year)	Inpatient prescription drugs. 80% of allowable charges for immunosup- pressive drugs during the first year following a covered transplant (after \$75 deductible/calendar year)		

Insurance Commissioner  
 Leg. Rule 33-28  
 Series 24, Sec. 11  
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SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	<u>In 1989 Medicare Pays Per Calendar Year</u>	<u>Effective January 1, 1990, Medicare Will Pay</u>	<u>In 1989 Your Coverage Pays</u>	<u>Effective January 1, 1990, Your Coverage Will Pay</u>
BLOOD	80% of all costs except non-replacement fees (blood deductible) for first 3 pints in each benefit period (after \$75 deductible/calendar year)	80% of costs except nonreplacement fees (blood deductible) for first 3 pints (after \$75 deductible/calendar year)		

[Any other policy benefits not mentioned in this chart should be added to the chart in the order prescribed by the outline of coverage. If there are corresponding Medicare benefits, they should be shown.]

[Describe any coverage provisions changing due to Medicare modifications.]

[Include information about when premium adjustments that may be necessary due to changes in Medicare benefits will be effective.]

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY [COMPANY] ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT [Policy] CONTACT:

[COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF AGENT]

[ADDRESS/PHONE NUMBER]

6. 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 charges);
  - (g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);
  - (h) Care received outside the U.S.A.;
  - (i) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
7. 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.
8. A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.
9. 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.

#### 11.4 Notice Regarding Policies or Subscriber Contracts Which Are Not Medicare Supplement Policies.

Any accident and sickness insurance policy or subscriber contract, other than a Medicare supplement policy; or a policy

issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. § 1395, et seq.); disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified in Subsection 1.5(B) of this regulation, issued for delivery in this State to persons eligible for Medicare by reason of age shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a Medicare supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate or subscriber contract delivered to insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS [POLICY, CERTIFICATE OR SUBSCRIBER CONTRACT] IS NOT A MEDICARE SUPPLEMENT. [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

## Section 12. Requirements for Application Forms and Replacement Coverage

12.1 Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing such questions may be used.

(A) Do you have another Medicare supplement insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?

(B) Did you have another Medicare supplement insurance policy or certificate in force during the last twelve (12) months?

(1) If so, with which company?

(2) If that policy lapsed, when did it lapse?

(C) Are you covered by Medicaid?

(D) Do you intend to replace any of your medical or health insurance coverage with this policy [certificate]?

12.2 Agents shall list any other health insurance policies they have sold to the applicant.

(A) List policies sold which are still in force.

(B) List policies sold in the past five (5) years which are no longer in force.

12.3 Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a comparative information form, a benefit comparison form, and a notice regarding replacement of accident and sickness coverage. One (1) copy of such forms and the notice signed as indicated in Sections 12.4 and 12.5 by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer. A direct response insurer shall deliver to the applicant at the time of the issuance of the policy the comparative information form, the benefit comparison form, and the notice regarding replacement of accident and sickness coverage.

12.4 The comparative information form, benefit comparison form and notice required by Subsection 12.3 above for an insurer, other than a direct response insurer, shall be provided in substantially the following form:

Insurance Commissioner  
Leg. Rule 33-28  
Series 24, Sec. 12  
EMERGENCY

COMPARATIVE INFORMATION FORM

Agent's Name \_\_\_\_\_ Address \_\_\_\_\_  
Phone Number \_\_\_\_\_

Name of Proposed Insured \_\_\_\_\_ Address \_\_\_\_\_  
Date of Birth \_\_\_\_\_

GENERAL INFORMATION	EXISTING INSURANCE	PROPOSED INSURANCE
Name of Company	_____	_____
Policy Number	_____	_____
Basic Policy Generic Name	_____	_____
Name of Basic Policy	_____	_____
Rider 1; Generic Name	_____	_____
Rider 2; Generic Name	_____	_____
Rider 3; Generic Name	_____	_____
Issue Age	_____	_____
Date of Issue	_____	_____
Contestable Period Expires	_____	_____
Suicide Clause Expires	_____	_____
Pre-Existing Condition Expires	_____	_____
Free Look Period Expires	_____	_____

AGENT'S STATEMENT

1. The primary reasons for my recommending the proposed replacement of existing Medicare supplement insurance by new Medicare supplement insurance are:\*

2. My recommendations as to the existing insurance is that it be:

Lapsed

Other (Explain) \_\_\_\_\_

3. Have you provided the proposed insured with an outline of coverage with their signature and date of receipt affixed? \_\_\_\_\_

\* Specific reasons must be given. For example, if you believe the existing Medicare supplement insurance does not meet the insured/buyer's needs, you must specify why you think it does not.

BENEFIT COMPARISON FORM

<u>DOES THE POLICY COVER:</u>	<u>EXISTING INSURANCE</u>	<u>PROPOSED INSURANCE</u>
Medicare Part A hospital deductible?.....	_____	_____
Medicare Part A hospital daily co-payments?.....	_____	_____
Hospital Care Beyond Medicare's limits.....	_____	_____
Medicare Part B annual deductible?.....	_____	_____
Medicare Part B co-payments?.....	_____	_____
Medicare blood deductibles?....	_____	_____
Private hospital room?.....	_____	_____
Private hospital nurses?.....	_____	_____
Medical appliances such as eyeglasses and hearing aids?...	_____	_____
Custodial nursing home care?...	_____	_____
Is there a coordination of benefits provision?.....	_____	_____
Can the company cancel or non-renew the policy?.....	_____	_____
What are the policy limits for covered services?.....	_____	_____
What health conditions are excluded under the policy?.....	_____	_____
How often can the company raise the premium?.....	_____	_____
How long before existing health problems are covered?...	_____	_____
Does the policy have a waiting period? How long?.....	_____	_____

Insurance Commissioner  
Leg. Rule 33-28  
Series 24, Sec. 12  
EMERGENCY

BENEFIT COMPARISON FORM (cont.)

AGENT'S CERTIFICATION

I hereby certify that prior to taking an application for a policy, I have provided the applicant with the Notice Regarding Replacement of Medicare Insurance and the information in this Benefit Comparison Form is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
(Signature of Agent)

\_\_\_\_\_  
(Date)

Insurance Commissioner  
Leg. Rule 33-28  
Series 24, Sec. 12  
EMERGENCY

NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF MEDICARE SUPPLEMENT INSURANCE

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing Medicare supplement insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT [BROKER OR OTHER REPRESENTATIVE]:  
(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing Medicare supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

Insurance Commissioner  
Leg. Rule 33-28  
Series 24, Sec. 12  
EMERGENCY

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

\_\_\_\_\_  
Signature of Agent, Broker or Other  
Representative

\_\_\_\_\_  
[Typed Name and Address of Agent or Broker]

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

12.5. The notice required by Subsection 12.3 above for a direct response insurer shall be as follows:

Insurance Commissioner  
 Leg. Rule 33-28  
 Series 24, Sec. 12  
 EMERGENCY

COMPARATIVE INFORMATION FORM  
 (Insurance Company's Name and Address)

Authorized Company Representative's Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone Number \_\_\_\_\_

Name of Proposed Insured \_\_\_\_\_ Address \_\_\_\_\_  
 Date of Birth \_\_\_\_\_

GENERAL INFORMATION	EXISTING INSURANCE	PROPOSED INSURANCE
Name of Company	_____	_____
Policy Number	_____	_____
Basic Policy Generic Name	_____	_____
Name of Basic Policy	_____	_____
Rider 1; Generic Name	_____	_____
Rider 2; Generic Name	_____	_____
Rider 3; Generic Name	_____	_____
Issue Age	_____	_____
Date of Issue	_____	_____
Contestable Period Expires	_____	_____
Suicide Clause Expires	_____	_____
Pre-Existing Condition Expires	_____	_____
Free Look Period Expires	_____	_____

AUTHORIZED COMPANY  
 REPRESENTATIVE'S STATEMENT

1. The primary reasons for recommending the proposed replacement of existing Medicare supplement insurance by new Medicare supplement insurance are:\*

\_\_\_\_\_

\_\_\_\_\_

2. Recommended action as to the existing insurance is that it be:

Lapsed.

Other (Explain) \_\_\_\_\_

3. Has the insurance company provided the proposed insured with an outline of coverage with their signature and date of receipt affixed? \_\_\_\_\_

\* Specific reasons must be given. For example, if you believe the existing Medicare supplement insurance cannot meet the insured/buyer's needs, you must specify why you think it does not.

Insurance Commissioner  
Leg. Rule 33-28  
Series 24, Sec. 12  
EMERGENCY

BENEFIT COMPARISON FORM (cont.)

AUTHORIZED COMPANY  
REPRESENTATIVE'S CERTIFICATION

I hereby certify that prior to taking an application for a policy, I have provided the applicant with the Notice Regarding Replacement of Medicare Insurance and the information in this Benefit Comparison Form is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
(Signature of Authorized  
Company Representative)

\_\_\_\_\_  
(Date)

Insurance Commissioner  
Leg. Rule 33-28  
Series 24, Sec. 12  
EMERGENCY

BENEFIT COMPARISON FORM  
(Insurance Company's Name and Address)

<u>DOES THE POLICY COVER:</u>	<u>EXISTING INSURANCE</u>	<u>PROPOSED INSURANCE</u>
Medicare Part A hospital deductible?.....	_____	_____
Medicare Part A hospital daily co-payments?.....	_____	_____
Hospital Care Beyond Medicare's limits.....	_____	_____
Medicare Part B annual deductible?.....	_____	_____
Medicare Part B co-payments?.....	_____	_____
Medicare blood deductibles?....	_____	_____
Private hospital room?.....	_____	_____
Private hospital nurses?.....	_____	_____
Medical appliances such as eyeglasses and hearing aids?...	_____	_____
Custodial nursing home care?...	_____	_____
Is there a coordination of benefits provision?.....	_____	_____
Can the company cancel or non-renew the policy?.....	_____	_____
What are the policy limits for covered services?.....	_____	_____
What health conditions are excluded under the policy?.....	_____	_____
How often can the company raise the premium?.....	_____	_____
How long before existing health problems are covered?...	_____	_____
Does the policy have a waiting period? How long?.....	_____	_____

NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF MEDICARE SUPPLEMENT INSURANCE

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to [your application] [information you have furnished] you intend to lapse or otherwise terminate existing Medicare supplement insurance and replace it with the policy delivered herewith issued by [Company Name] Insurance Company. Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing Medicare supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
4. [To be included only if the application is attached to the policy.]

If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the

Insurance Commissioner  
Leg. Rule 33-28  
Series 24, Sec. 13  
EMERGENCY

application and write to [Company Name and Address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

---

(Company Name)

### Section 13. Filing Requirements for Advertising

13.1 Every insurer, health care service plan or other entity providing Medicare supplement insurance or benefits in this State shall provide a copy of any Medicare supplement advertisement intended for use in this State whether through written, radio or television medium to the commissioner for review. Such advertisement shall comply with all laws of this State, including, when applicable, the provisions of West Virginia Code §33-6-8(e), §33-6-35, and §33-11-4(2).

### Section 14. Standards for Marketing

14.1 Every insurer, health care service plan or other entity marketing Medicare supplement insurance coverage in this State, directly or through its producers, shall:

(A) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(B) Establish marketing procedures to assure excessive insurance is not sold or issued.

(C) Establish marketing procedures which set forth a mechanism or formula for determining whether a replacement policy or certificate contains benefits clearly and substantially greater than the benefits under the replaced policy for purposes of triggering first year commissions as authorized in Section 10 of this regulation.

(D) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with medical care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(E) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(F) Every insurer or entity marketing Medicare supplement insurance shall establish auditable procedures for verifying compliance with this Subsection 14.1.

14.2 In addition to the practices prohibited in this State's unfair trade practices act [West Virginia Code §33-11-1, et seq.], the following acts and practices are prohibited:

(A) Twisting. Knowingly make any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(B) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(C) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

#### Section 15. Appropriateness of Recommended Purchase and Excessive Insurance

15.1 In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

15.2 Any sale of Medicare supplement coverage which 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 individual's health coverage already in force, it would insure no more than 100% of the individual's actual medical expenses covered under the combined policies.

#### Section 16. Reporting of Multiple Policies

16.1 On or before March 1, every insurer or other entity providing Medicare supplement insurance coverage in this State shall report the following information for every individual resident of this State for which the insurer or entity has in force more than one Medicare supplement insurance policy or certificate:

- (A) Policy and certificate number, and
- (B) Date of issuance.

16.2 The items set forth above must be grouped by individual policyholder.

#### Section 17. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates

17.1 If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy for similar benefits to the extent such time was spent under the original policy.

#### Section 18. Separability

18.1 If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

[COMPANY NAME]

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE - 1990

THE FOLLOWING CHART BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	<u>In 1989, Medicare Pays Per Calendar Year</u>	<u>Effective January 1, 1990, Medicare Will Pay</u>	<u>In 1989 Your Coverage Pays</u>	<u>Effective January 1, 1990, Your Coverage Will Pay</u>
MEDICARE PART A SERVICES AND SUPPLIES				
Inpatient Hospital Services	Unlimited number of hospital days after \$560 deductible	All but \$592 for first 60 days/benefit period		
Semi-Private Room & Board		All but \$148 a day for 61st-90th days/benefit period		
Misc. Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room		All but \$296 a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)		
BLOOD	Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each calendar year		

Insurance Commissioner  
 Leg. Rule 33-28  
 Series 24  
 EMERGENCY

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	In 1989 Medicare Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay	In 1989 Your Coverage Pays	Effective January 1, 1990, Your Coverage Will Pay
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit	100% of costs for first 20 days (after a 3 day prior hospital confinement)/ benefit period		
	First 8 days - All but \$25.50 a day	All but \$74.00 a day for 21st-100th days/benefit period		
	9th through 150th day - 100% of costs	Beyond 100 days - Nothing/benefit period		
	Beyond 150 days - Nothing			
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after \$75 deductible)	80% of allowable charges (after \$75 deductible/ calendar year)		
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for immuno- suppressive drugs during the first year following a covered trans- plant (after \$75 deductible/ calendar year)	Inpatient prescription drugs. 80% of allowable charges for immunosup- pressive drugs during the first year following a covered transplant (after \$75 deductible/calendar year)		

Insurance Commissioner  
 Leg. Rule 33-28  
 Series 24  
 EMERGENCY

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	In 1989 Medicare Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay	In 1989 Your Coverage Pays	Effective January 1, 1990, Your Coverage Will Pay
BLOOD	80% of all costs except non-replacement fees (blood deductible) for first 3 pints in each benefit period (after \$75 deductible/calendar year)	80% of costs except nonreplacement fees (blood deductible) for first 3 pints (after \$75 deductible/calendar year)		

[Any other policy benefits not mentioned in this chart should be added to the chart in the order prescribed by the outline of coverage. If there are corresponding Medicare benefits, they should be shown.]

[Describe any coverage provisions changing due to Medicare modifications.]

[Include information about when premium adjustments that may be necessary due to changes in Medicare benefits will be effective.]

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY [COMPANY] ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT [Policy] CONTACT:

[COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF AGENT]

[ADDRESS/PHONE NUMBER]

STATE OF WEST VIRGINIA



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GASTON CAPERTON  
GOVERNOR

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

LEGAL DIVISION  
304) 348-0401

FACSIMILE  
304) 348-0412

OFFICES OF THE  
**INSURANCE COMMISSIONER**  
2019 WASHINGTON STREET, EAST  
CHARLESTON, WEST VIRGINIA 25305

HANLEY C. CLARK  
INSURANCE COMMISSIONER

February 22, 1991

HAND DELIVERED

Ms Judy Cooper  
Office of Secretary of State  
State Capitol  
Charleston, WV 25305

Dear Ms Cooper:

Enclosed please find for filing fifteen (15) copies of the following:

- (1) Notice of an Emergency Amendment to an Emergency Rule
- (2) Permanent Regulations to Implement Changes in Medicare Supplement Insurance to Conform to Medicare Catastrophic Coverage Repeal Act of 1989 (Series 24)

Please contact me if further information is required.

Very truly yours,

A handwritten signature in cursive script that reads "Linda Gay".

Linda Gay  
Assistant Attorney General

LG/iw  
Enclosures

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

March 1, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commissioner

RULE: New Rule, Series 24; Implement Changes in Medicare Supplement Insurance to Conform to Medicare Catastrophic Coverage Repeal Act of 1989

DATE FILED AS AN EMERGENCY RULE: January 18, 1991;  
February 22, 1991

DECISION NO. 13-91

Following review under WV Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule and emergency amendment be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER  
Secretary of State

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SECRETARY OF STATE

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Secretary of State

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Deputy Secretary of State

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DECISION                      EMERGENCY RULE DECISION  
(ERD 13-91)

AGENCY: Insurance Commissioner  
RULE: New Rule, Series 24, Implement Changes in Medicare Supplement Insurance To Conform to Medicare Catastrophic Coverage Repeal Act of 1989

FILED AS AN EMERGENCY RULE: January 18, 1991  
February 22, 1991

- par. 1 The Insurance Commissioner (Commissioner) has filed the above new rule and amendments as an emergency.
- par. 2 West Virginia Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Commissioner filed this emergency rule with supporting documents with the Secretary of State on January 18, 1991 and February 22, 1991 and with the LRMRC on January 18, 1991 and February 22, 1991.

par. 7 It is the determination of the Secretary of State that the Commissioner has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §33-28-5b and §33-16-3d read in part:

(2) The commissioner may issue reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(3) The commissioner may prescribe by regulation a standard form and the contents of an informational brochure for persons eligible for medicare by reason of age, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by regulation that the information brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by regulation that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare by reason of age, but in no event later than the time of policy delivery.

(4) The commissioner may further promulgate reasonable regulations to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts or certificates by persons eligible for medicare by reason of age.

(g) Administrative procedures. -- Regulations promulgated pursuant to this section shall be subject to the provisions of §29A-1-1 et seq. (West Virginia Administrative Procedures Act.)

par. 9 It is the determination of the Secretary of State that the Commissioner has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commissioner are as follows:

The Insurance Commissioner regulates policies sold to supplement benefits provided under the federal Medicare program. The benefit and premium levels of Medicare supplement insurance policies are therefore contingent upon and coordinated with benefits provided by the Medicare program. Pursuant to Congress' enactment of the Medicare Catastrophic Coverage Repeal Act (MCCRA) of 1989, the Insurance Commissioner filed a set of transitional regulations regarding Medicare supplement insurance on an emergency basis on December 29, 1989. The Commissioner voluntarily withdrew those regulations on October 12, 1990. That action was taken in anticipation of filing the instant permanent rule in late 1990, after its expected approval by the Supplemental Health Insurance Panel (SHIP) of the federal Department of Health and Human Services.

par. 13 The facts and circumstances of the emergency amendment as presented by the Commissioner are as follows:

Emergency Rule of the Insurance Commissioner, Series 24, Implement Changes in Medicare Supplement Insurance to Conform to Medicare Catastrophic Coverage Repeal Act of 1989, is amended on an emergency basis as follows:

(1) All strike-throughs and underscoring in Section 8 on page 12, in Section 10 on page 14, and Section 12 on page 26 are to be deleted.

(2) A portion of the chart entitled "[COMPANY NAME] OUTLINE OF MEDICARE SUPPLEMENT COVERAGE AND PREMIUM INFORMATION" beginning on page 17 was inadvertently omitted and is to be inserted following page 17 as new page 18.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in 29A-3-15(g) . . ."time limitation" and Federal Law.

par. 15 This decision shall be cited as Emergency Rule Decision 13-91 or ERD 13-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Commission.

  
KEN HECHLER  
SECRETARY OF STATE

1991  
MAR 14 AM 10:14  
FILED  
OFFICE OF THE SECRETARY OF STATE  
ROCKINGHAM

Entered \_\_\_\_\_