

## Bulletin 251

### REVISED FEDERAL REQUIREMENTS FOR COVERAGE WHICH OVERLAPS MEDICARE

Up until now, federal law has prohibited the knowing sale of individual health coverage duplicating Medicare or Medicaid to a person who is eligible for those programs. (42 U.S.C. § 1395 sub-§(d)(3)(A), as enacted by OBRA 1990). However, that section of the Social Security Act was amended in 1994 (H.R. 5252) to permit the sale of such overlapping coverage, to the extent authorized by state law, provided that:

- All benefits under the policy are payable in full without regard to any other coverage the beneficiary is entitled to; in particular, the policy benefits cannot be reduced in any way on account of Medicare or Medicaid payments for the same condition; and
- A disclosure statement, developed by the National Association of Insurance Commissioners and approved by the Secretary of Health and Human Services, must be prominently included in or attached to the application.

The required disclosure statements have now been approved and published in the Federal Register, enabling the new law to take effect on August 11, 1995. There are ten different standardized disclosure statements, depending on whether the policy covers:

1. expenses incurred for accidental injury only;
2. specified limited services;
3. expenses incurred for specific diseases or impairments;
4. specific dollar amounts for specific diseases or impairments;
5. indemnity policies, other than long-term care, with fixed daily payments;
6. policies combining incurred expenses and fixed indemnity payments;
7. long-term care policies providing both nursing home and non-institutional coverage;
8. long-term care policies primarily providing nursing home coverage;
9. home care policies; and
10. all other policies which duplicate Medicare benefits.

Disclosure statements are not required for:

- Medicare supplements and other coverage that in no way duplicates Medicare;
- Medicare coverage provided under contract by private carriers;
- employer or labor union group health plans;
- life insurance policies with long-term care riders or accelerated death benefits;
- disability policies; or
- automobile, personal liability, and other casualty insurance policies.

(The casualty insurance exemption does not apply to health insurance written under a casualty insurance license.)

#### Filing Requirements

Copies of each of the ten standardized disclosure forms are available on request from the Bureau. As the federal notice emphasizes, the law relaxing the federal standards does not preempt state restrictions which are more stringent than federal law, and does not preempt state filing requirements. Companies offering individual health insurance in Maine must therefore revise any relevant form filings to include the appropriate disclosure language.

## Effect on Guaranteed Issue

Whether there is any effect on the scope of the guaranteed issue requirement depends on the terms of the individual plan. Until the federal law was amended, as explained in Bulletin 230 ("Individual and Group Health Insurance"), the ban on overlapping coverage had preempted Maine's guaranteed issue law entirely as it applied to individuals who were eligible for Medicare or Medicaid. The preemption still applies to any plan which coordinates or otherwise reduces benefits when there is duplicate coverage, which includes the Standard and Basic plans established by Rule 750. However, if any carrier offers an individual health plan that falls within the scope of Maine's guaranteed issue requirements, and the plan pays its benefits in full independent of any other coverage, the carrier must amend all such policy forms to include the appropriate disclosure statements, and must extend guaranteed coverage to applicants who are eligible for Medicare.

August 10, 1995 \_\_\_\_\_  
BRIAN K. ATCHINSON  
SUPERINTENDENT OF INSURANCE