211 CMR 71.00: MEDICARE SUPPLEMENT INSURANCE TO FACILITATE THE IMPLEMENTATION OF M.G.L. c. 176K AND SECTION 1882 OF THE FEDERAL SOCIAL SECURITY ACT

Section

71.01: Purpose

The purpose of 211 CMR 71.00 is to provide for the implementation of M.G.L. c. 176K and the federal Social Security Act § 1882; to provide for the reasonable standardization and simplification of the terms, benefits, organization and format of Medicare Supplement Insurance Policies; to facilitate public understanding and comparison of such Policies; to ensure that Policies are written in an easily understood manner; to provide for the full disclosure of Policy contents; 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; to prevent the sale of coverage which does not in fact complement Medicare; to ensure fair marketing; to prevent deceptive sales practices; to provide for full disclosure in the sale of accident and sickness insurance coverage to persons eligible for Medicare; and to facilitate review of rates for Medicare Supplement Insurance.

71.02: Applicability, Scope and Effective Date

(1) Except as otherwise provided in 211 CMR 71.00, 211 CMR 71.00 shall apply to:

(a) All Medicare Supplement Insurance Policies offered, sold, issued, delivered, or otherwise made effective or renewed in Massachusetts on or after April 19, 1996;

(b) All Certificates issued under group Medicare Supplement Insurance Policies which Certificates have been offered, sold, issued, delivered or otherwise made effective or renewed in Massachusetts on or after April 19, 1996; and

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(c) provided however, that except as otherwise permitted or required under 211 CMR 71.03, 71.07(5), 71.12(3) and 71.12(11), all Medicare Supplement Insurance Policies and Certificates originally issued to be effective prior to January 1, 1995 shall be Guaranteed Renewable and Issuers shall continue to renew all Medicare Supplement Insurance Policies and Certificates originally issued to be effective prior to July 30, 1992, if required under the terms and conditions of those Policies and Certificates; and provided, further, that Health Maintenance Organizations shall continue to renew Evidences of Coverage Issued Pursuant to a Medicare Part C Contract with Medicare originally made effective prior to January 1, 1995, if required under the terms and conditions of those Evidences of Coverage.

(2) 211 CMR 71.00 shall not apply to a Policy 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 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.

(3) 211 CMR 71.00 supplements the rules of 211 CMR 40.00 through 211 CMR 42.00. In case of direct conflict between this and earlier regulations, 211 CMR 71.00 shall govern.

(4) 211 CMR 71.00 shall govern in case of direct conflict between 211 CMR 71.00 and other Massachusetts regulations.

71.03: Definitions

Actuarial Opinion. A signed written statement by a member of the American Academy of Actuaries based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the Issuer in establishing premium rates for Policies for Medicare Supplement Insurance.

Advertisement. Advertisement shall include, but is not limited to:

(a) Printed and published material, audio-visual material and descriptive literature of an Issuer used in direct mail, newspapers, websites, magazines, radio scripts, television scripts, billboards and similar displays;

(b) Descriptive literature and sales aids of all kinds issued by an Issuer, producer or other entity for presentation to members of the insurance-buying public including, but not limited to, circulars, leaflets, booklets, depictions, illustrations, electronic messaging, and form letters; and

(c) Prepared sales talks, presentations and material for use by producers (and solicitors).

Alternate Innovative Benefit Rider. Any rider issued, renewed, or delivered by an Issuer which provides alternate innovative benefits consistent with 211 CMR 71.09(5) and may only be offered as optional additional coverage with a Medicare Supplement Core Insurance Policy, or a Medicare Supplement 1 Insurance Policy, or a Medicare Supplement 1A Insurance Policy, or a Medicare Select Insurance Policy described in 211 CMR 71.21. Consistent with 42 U.S.C. § 1395ss(p)(4)(B), an Alternate Innovative Benefit Rider is to be Guaranteed Renewable.

Applicant. In the case of an individual Medicare Supplement Insurance Policy, the person who seeks to contract for insurance benefits, and in the case of a group Medicare Supplement Insurance Policy, the proposed certificateholder.

Bankruptcy. When a Medicare Advantage organization that is not an Issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in Massachusetts.

BBA. The federal Balanced Budget Act of 1997 (P.L. 105-33).

Benefit Level. The health benefits supplemental to Medicare provided by, and the benefit payment structure of, a Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider.

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Biologically-based Mental Disorders. Those disorders that are described in M.G.L. c. 175, § 47B(a), (b) and (c), M.G.L. c. 176A, § 8A(a), (b), and (c), and M.G.L. c. 176B, § 4A(a), (b) and (c).

Certificate. Any Certificate issued, renewed, delivered or issued for delivery in Massachusetts under a group Medicare Supplement Insurance Policy.

Certificate Form. The form on which the Certificate is issued, renewed, delivered or issued for delivery by the Issuer.

Class. The underwriting and rating classifications originally used at the time the Policy was issued.

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 producer or Issuer.

Commissioner. The Commissioner of Insurance or his or her designee.

Community Rating. A rating methodology in which the premium for all persons covered by a particular Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider is the same, based on the experience of all persons covered by the plan, without regard to age, sex, health status, occupation, or genetic information.

Compensation. Includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the Medicare Supplement Insurance Policy including, but not limited to, commissions, bonuses, gifts, prizes, awards and finders' fees.

Creditable Coverage.

(a) Means, with respect to an individual, coverage provided under any of the following:
1. A group health plan;
2. Health insurance coverage;
3. Part A or Part B of Title XVIII of the Social Security Act (Medicare);
4. Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under the federal Social Security Act § 1928;
5. 10 U.S.C. c. 55 (CHAMPUS);
6. A medical care program of the Indian Health Service or of a tribal organization;
7. A State health benefits risk pool;
8. A health plan offered under 5 U.S.C. c. 89 (Federal Employees Health Benefits Program);
9. A public health plan as defined in federal regulation; and
10. A health benefit plan under 22 U.S.C. c. 2504(e), § 5(e) (Peace Corps Act).

(b) Shall not include one or more, or any combination, of the following:
1. Coverage only for accident or disability income insurance, or any combination thereof;
2. Coverage issued as a supplement to liability insurance;
3. Liability insurance, including general liability insurance and automobile liability insurance;
4. Workers' compensation or similar insurance;
5. Automobile medical payment insurance;
6. Credit-only insurance;
7. Coverage for on-site medical clinics; and
8. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(c) Shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

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1. Limited scope dental or vision benefits;
2. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and
3. Such other similar, limited benefits as are specified in federal regulations.

(d) Shall not include the following benefits if offered as independent, non-coordinated benefits:

1. Coverage only for a specified disease or illness; and
2. Hospital indemnity or other fixed indemnity insurance.

(e) Shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

1. Medicare supplemental health insurance as defined under the Social Security Act § 1882(g)(1);
2. Coverage supplemental to the coverage provided under 10 U.S.C. c. 55; and
3. Similar supplemental coverage provided to coverage under a group health plan.

Division. The Division of Insurance.

Eligible Person. Any person who is eligible for Medicare Part A and B and is enrolled in Medicare Part B regardless of age; provided, however, that Issuers are not required to provide coverage to a person who is younger than 65 years old and eligible for Medicare coverage due solely to end-stage renal disease; provided, further, that nothing in 211 CMR 71.00 prevents an Issuer from providing coverage to a person who is younger than 65 years old and is eligible for Medicare coverage due solely to end-stage renal disease; and provided, further, that if an Issuer determines that it will provide coverage to people who are younger than 65 years old and eligible for Medicare coverage due solely to end-stage renal disease, it shall do so in accordance with all of the provisions of 211 CMR 71.00. A Medicare Supplement 1 policy shall, on or after January 1, 2020, only be offered to Eligible Persons who:

(a) have attained 65 years of age before January 1, 2020; or

(b) first became eligible for Medicare due to age, disability or end-stage renal disease, before January 1, 2020. Persons who are otherwise eligible for Medicare Part A and B and who are enrolled in Medicare Part B, but who are not eligible to purchase Medicare Supplement 1 coverage, shall be eligible to purchase all other Medicare Supplement coverage that is currently offered. For the definition of eligible persons related to the federal Balanced Budget Act of 1997 (BBA Eligible Person), *see* 211 CMR 71.10(12)(a). For the definition of eligible persons related to the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA Eligible Person), *see* 211 CMR 71.10(13)(a).

Employee Welfare Benefit Plan. A plan, fund or program of employee benefits as defined in 29 U.S.C. § 1002 (Employee Retirement Income Security Act).

Evidence of Coverage. Any certificate, contract or agreement issued to a Member stating health services and benefits to which the Member is entitled as described in M.G.L. c. 176K.

Genetic Information. Any written, recorded, individually identifiable result of a genetic test or explanation of such a result.

Genetic Test. A test of human DNA, RNA, mitochondrial DNA, chromosomes or proteins for the purpose of identifying the genes, or genetic abnormalities, or the presence or absence of inherited or acquired characteristics in genetic material.

Group. An entity, as described in M.G.L. c. 175, § 110, to which a general or blanket Medicare Supplement Insurance Policy is issued or an entity to which a Medicare Supplement Insurance contract is issued pursuant to M.G.L. c. 176A, § 10 and M.G.L. c. 176B, § 4, except Group shall not include one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or 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.

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Guaranteed Renewable. A Policy provision whereby the Insured has the right, subject to the provisions of 211 CMR 71.07(5), to continue the Medicare Supplement Insurance Policy in force by the timely payment of premiums and the Issuer has no unilateral right to make any change in any provision of the Policy or rider(s), including Alternate Innovative Benefit Rider(s), while the insurance is in force other than changes in premiums, and cannot cancel or decline to renew, except for the nonpayment of premium or material misrepresentation; provided that no Nonprofit Hospital Service Corporation or Medical Service Corporation shall be required to continue the coverage of a Policyholder who becomes a resident of a state other than Massachusetts.

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.

Individual. A person or family to which a Medicare Supplement Insurance Policy is issued pursuant to M.G.L. c. 175, § 108 or M.G.L. c. 176A, § 6, and M.G.L. c. 176B, § 4.

Initially Eligible for Coverage. The date when an Eligible Person first enrolled for benefits under Medicare Part B, lost employer-sponsored health coverage due to termination of employment or because of employer bankruptcy or because of discontinuance of employer-sponsored health coverage available to similarly situated employees by the employer, moved out of the service area of a Health Maintenance Organization, or became a resident of Massachusetts.

Insolvency. When an Issuer, licensed to transact the business of insurance in Massachusetts, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the Issuer's state of domicile.

Insured. A subscriber, Policyholder, member, enrollee or certificateholder under a Medicare Supplement Insurance Policy.

Issue. To offer, sell, issue, deliver, or otherwise make effective, or renew.

Issuer. Any company as defined in M.G.L. c. 175, § 1 and authorized to write accident and health insurance; any hospital service corporation as defined in M.G.L. c. 176A, § 1, any medical service corporation as defined in M.G.L. c. 176B, § 1, any health maintenance organization licensed under M.G.L. c. 176G, or any Fraternal Benefit Society as authorized in M.G.L. c. 176 which offers, sells, delivers or otherwise makes effective, or renews in Massachusetts Medicare Supplement Insurance Policies. For purposes of determining whether an Issuer is offering a non-network Medicare Supplement plan, an Issuer shall include the Issuer, its parent company or companies, its affiliated companies, and/or its subsidiary companies.

Late Enrollee. An Eligible Person who has submitted an application for a Medicare Supplement Insurance Policy after the six-month period beginning with the first month in which the Eligible Person first enrolled for benefits under Medicare Part B, or lost employer-sponsored coverage due to termination of employment or because of employer bankruptcy or because of discontinuance of employer-sponsored health coverage by the employer, or became a resident of Massachusetts; provided, however, that an Eligible Person shall not be considered a Late Enrollee if the person was covered under a Reasonably Actuarially Equivalent previous health plan and the previous coverage was continuous for the lesser of three years or the period since first eligibility and to a date not more than 30 days prior to the effective date of the new coverage.

Medicare. "Health Insurance for the Aged Act", Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

Medicare Advantage Plan. A plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), and includes:

(a) Coordinated care plans that provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider plans;

71.03: continued

(b) Medical savings account plans coupled with a contribution into a Medicare Advantage medical savings account; and
(c) Medicare Advantage private fee-for-service plans.

Medicare Eligible Expense. Expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

Medicare Supplement Insurance Policy. A type of health insurance issued by a carrier, other than a policy issued pursuant to a contract under the Social Security Act § 1876 or § 1833 (42 U.S.C. § 1395 *et seq*.), or a policy issued under a demonstration project authorized pursuant to amendments to the federal Social Security Act, 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. Unless otherwise set forth within 211 CMR 71.00, Core Medicare Supplement Policies, Medicare Supplement 1 Policies, Medicare Supplement 1A Policies, and Medicare Supplement 2 Policies are all subject to Medicare Supplement Insurance Policy requirements.

Mental Disorder. A condition as described in the 5th edition of the *Diagnostic and Statistical Manual* of the American Psychiatric Association.

MMA. The federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108-173).

Off-label Use. A drug that has not been specifically approved by the United States Food and Drug Administration for the treatment of cancer or HIV/AIDS, but is a drug approved for other indications by the Food and Drug Administration.

Other Mental Health Disorders. All other mental disorders described in the 5th edition of the *Diagnostic and Statistical Manual* that are not biologically-based.

Outpatient Prescription Drug. A prescription drug that is administered on an outpatient basis.

Participate in the Market. To offer, sell, issue, deliver, or otherwise make effective, or renew, a Medicare Supplement Insurance Policy, Alternate Innovative Benefit Rider in Massachusetts, and to have not discontinued the availability of all of its Policy forms or Certificate forms.

Policy. Any Policy, Certificate, contract, agreement, statement of coverage, rider or endorsement issued by an Issuer as defined in 211 CMR 71.00 which provides Medicare Supplement Insurance as defined in 211 CMR 71.03: Policy other than a policy issued pursuant to a contract under the Social Security Act § 1876 (42 U.S.C. § 1395 *et seq*.) or an issued policy under a demonstration project specified in 42 U.S.C. § 1395ss(g)(1), which provides Medicare Supplement Insurance as defined herein. Policy, unless stated otherwise within 211 CMR 71.00, includes any Alternate Innovative Benefits Riders. Policy does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under the Social Security Act § 1833(a)(1)(A).

Policy Form. The form on which the Medicare Supplement Insurance Policy is delivered or issued for delivery by the Issuer.

Policyholder. Any person holding a Policy as defined in 211 CMR 71.03.

Pre-existing Conditions Limitation or Exclusion. A provision in a Medicare Supplement Insurance Policy which limits or excludes coverage for charges or expenses incurred following the Insured's coverage effective date as to a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

Producer. Any insurance producer, advisor or other person engaged in activities described in M.G.L. c. 175, §§ 162 through 177D.

71.03: continued

Rate Anniversary Date. The calendar date in any year at least one year later than the date on which an Issuer's most recent Medicare Supplement rate increase became effective.

Reasonably Actuarially Equivalent. The Benefit Level of one of two Medicare Supplement Insurance Policies or Evidences of Coverage Issued Pursuant to a Medicare Part C Contract with Medicare or other health benefit plan being compared is no more than ten percentage points greater in value than the Benefit Level for the other Medicare Supplement Insurance Policy, Alternate Innovative Benefit Rider or Evidence of Coverage Issued Pursuant to a Medicare Part C Contract with Medicare or health benefit plan, assuming that the benefits are offered to identical populations.

Secretary. The Secretary of the United States Department of Health and Human Services.

Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or carriers 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 carrier.

Upgrade Coverage. The Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider under which the Eligible Person is covered at the time of application for new coverage has a lower Benefit Level than the new coverage, and the two coverages are not Reasonably Actuarially Equivalent.

Waiting Period. A period immediately subsequent to the effective date of an Insured's coverage during which the insurance coverage does not pay for some or all hospital or medical expenses.

71.04: Readability Standards

(1) The text of all Policy forms not exempted under M.G.L. c. 175, § 2B must meet the requirements of M.G.L. c. 175, § 2B, including a minimum Flesch readability score of 50. All forms shall be written in clear and understandable English. When possible, technical terms must be avoided. If a technical term cannot be avoided, it must be defined at least one time.

(2) The text of all riders and endorsements to be used with such Policy forms shall separately achieve a Flesch score of 50 or higher. If such a form fails to meet this standard, an explanation must be given of why this standard cannot be met and the certification made pursuant to 211 CMR 71.12(8)(n) must indicate that such form, in conjunction with any other form or combinations of forms to which it will be attached, will achieve a score of 50 or higher.

71.05: Standards for Policy Definitions

(1) No Policy may be advertised, solicited, issued, renewed, delivered or issued for delivery in Massachusetts as a Medicare Supplement Insurance Policy, unless such Policy contains definitions or terms which conform to the requirements of 211 CMR 71.05.

(2) All definitions used in a Medicare Supplement Insurance Policy shall be compatible with Medicare definitions and practice.

(3) All Medicare Supplement Insurance Policies shall include a definition for the following terms:

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."

71.05: continued

(b) The 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, motor vehicle no-fault plan, or other motor vehicle insurance related plan, unless prohibited by law.

Benefit Period or Medicare Benefit Period shall not be defined more restrictively than as defined in the Medicare program.

Convalescent Nursing Home, Extended Care Facility, or Skilled Nursing Facility shall not be defined more restrictively than as defined in the Medicare program. Convalescent Nursing Home, Extended Care Facility, or Skilled Nursing Facility must take into account that there are Policy benefits for these providers' services which are paid for only by the Medicare Supplement Insurance Policy and for which Medicare does not contribute payment.

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, but shall not be defined more restrictively than as defined in the Medicare program. The definition must take into account that there are Policy benefits for these providers' services which are paid for only by the Medicare Supplement Insurance Policy and for which Medicare does not contribute payment.

Medicare shall be defined in the Policy and Certificate. 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."

Medicare Eligible Expenses shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

Physician shall not be defined more restrictively than as defined in the Medicare program. The definition must take into account that there are Policy benefits for this provider's services which are paid for only by the Medicare Supplement Insurance Policy and for which Medicare does not contribute payment.

Sickness shall not be defined more restrictively than the following: an illness or disease of an insured person for which expenses are incurred after the effective date of insurance and while the insurance is in force. Sickness 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.

71.06: Policy Limitations

(1) No Medicare Supplement Insurance Policy shall be advertised, solicited, issued, renewed, delivered or issued for delivery which contains any waiting period or preexisting condition limitation or exclusion.

(2) No Medicare Supplement Insurance Policy shall contain limitations or exclusions on coverage that are more restrictive than those of Medicare.

(3) Limitations on benefits shall be so labeled in a separate section of the Medicare Supplement Insurance Policy as well as placed with the benefit provisions to which they apply.

(4) No Medicare Supplement Insurance Policy shall contain benefits that duplicate benefits provided by Medicare. No Medicare Supplement Insurance Policy offered or sold after December 31, 2005 shall provide payment for drugs or biologicals eligible for coverage under Medicare Part D.

71.06: continued

(5) A Medicare Supplement Insurance Policy with benefits for outpatient prescription drugs shall not be offered or sold after December 31, 2005. A Medicare Supplement 1 policy shall, on or after January 1, 2020, only be offered to Eligible Persons who:

(a) have attained 65 years of age before January 1, 2020; or

(b) first become eligible for Medicare due to age, disability or end-stage renal disease, before January 1, 2020.

71.07: Renewability

(1) Medicare Supplement Insurance Policies shall include a renewability provision. The language or specifications of the provision shall be consistent with the type of contract issued. Medicare Supplement Insurance Policies, including Alternate Innovative Benefit Riders, shall not contain renewal provisions less favorable to the Insured than "Guaranteed Renewable" as that term is defined in 211 CMR 71.03.

(2) All Medicare Supplement Insurance Policies, including Alternate Innovative Benefit Riders, shall contain a renewability provision as required by 211 CMR 71.07(1). Such provision shall be appropriately captioned and shall appear on the first page of the Policy and shall include any reservation by the Issuer of the right to change premiums.

(3) Medicare Supplement Insurance Policies shall comply with the following requirements:

(a) The Issuer shall not cancel or nonrenew the Policy solely on the ground of the health status of the individual.

(b) The Issuer shall not cancel or nonrenew the Policy, including an Alternate Innovative Benefit Rider, for any reason other than nonpayment of premium or material misrepresentation; provided that no Nonprofit Hospital Service Corporation or Medical Service Corporation shall be required to continue the coverage of a Policyholder who becomes a resident of a state other than Massachusetts.

(c) If the Medicare Supplement Insurance Policy is held by a group, and the group policy is terminated and is not replaced, as provided under 211 CMR 71.07(3)(e), the Issuer shall offer certificateholders an individual Medicare Supplement Insurance Policy which, at the option of the certificateholder:

1. Provides for continuation of the benefits contained in the group Policy; or
2. Provides for benefits that otherwise meet the requirements of 211 CMR 71.07(3).

(d) If an individual is a certificateholder in a group Medicare Supplement Insurance Policy and the individual terminates membership in the group, the Issuer shall:

1. Offer the certificateholder the conversion opportunity described in 211 CMR 71.07(3)(c); or
2. At the option of the group Policyholder, offer the certificateholder continuation of coverage under the group Policy.

(e) If a group Medicare Supplement Insurance Policy is replaced by another group Medicare Supplement Insurance Policy purchased by the same Policyholder, the Issuer of the replacement Policy shall offer coverage to all persons covered under the old group Policy on its date of termination. Coverage under the new Policy shall not contain any waiting period or preexisting condition limitation or exclusion.

(f) Termination of a Medicare Supplement Insurance 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 conditioned 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. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g) General Standards. The following standards apply to Medicare Supplement Insurance Policies and are in addition to all other requirements of 211 CMR 71.00.

1. A Medicare Supplement Insurance Policy shall provide that benefits and premiums under the Policy shall be suspended at the request of the Policyholder for the period (not to exceed 24 months, unless the Issuer permits a longer period of suspension) in which the Policyholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the Policyholder notifies the Issuer of such Policy within 90 days after the date the individual becomes entitled to such assistance.

71.07: continued

2. If suspension occurs and if the Policyholder loses entitlement to medical assistance, the Policy shall be automatically reinstituted (effective as of the date of termination of such entitlement) if the Policyholder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

3. Each Medicare Supplement Insurance Policy shall provide that benefits and premiums under the Policy shall be suspended (for any period that may be provided by federal regulation) at the request of the Policyholder if the Policyholder is entitled to benefits under the Social Security Act § 226(b) and is covered under a group health plan (as defined in the Social Security Act § 1862(b)(1)(A)(v)). If suspension occurs and if the Policyholder loses coverage under the group health plan, the Policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the Policyholder provides notice of loss of coverage within 90 days after the date of the loss.

4. Reinstitution of such coverages as described in 211 CMR 71.07(3)(g)3. and 4.:

a. Shall not provide for any waiting period with respect to treatment of preexisting conditions;

b. Shall provide for coverage which is substantially equivalent to coverage in effect before the date of such suspension. If the suspended Medicare Supplement Insurance Policy provided coverage for outpatient prescription drugs, reinstitution of the Policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

c. Shall provide for classification of premiums on terms at least as favorable to the Policyholder as the premium classification terms that would have applied to the Policyholder had the coverage not been suspended.

(4) (a) Issuers shall continue to renew Medicare Supplement Insurance Policies originally made effective prior to January 1, 1995 under the terms and conditions of those Policies, except as otherwise permitted or required under 211 CMR 71.03 and 211 CMR 71.12.

(b) Required Notice of Opportunity to Transfer to Community Rated Policy. Every Issuer that has issued a Medicare Supplement Insurance Policy to be effective prior to January 1, 1995 and has an existing Policyholder of a Medicare Supplement Insurance Policy and renews an age-rated Medicare Supplement Insurance Policy on or after January 1, 1995 shall provide notice at the time of renewal to its Policyholders of their right to transfer to a community rated Policy during the annual open enrollment periods held in February and March of calendar years 1995, 1996 and 1997 with coverage to begin June 1st of such calendar year without paying a surcharge in accordance with the provisions in 211 CMR 71.10(5).

(5) (a) A Medicare Supplement Insurance Policy with benefits for outpatient prescription drugs in effect on December 31, 2005 shall be renewed, at the option of the Policyholder, for Policyholders who do not enroll in Medicare Part D.

(b) After December 31, 2005, a Medicare Supplement Insurance Policy with benefits for outpatient prescription drugs cannot be renewed after the Policyholder enrolls in Medicare Part D.

(c) Policyholders who are enrolled in a Medicare Supplement Insurance Policy with outpatient prescription drug coverage offered in Massachusetts on or after July 31, 1992 and who enroll in Medicare Part D shall be transferred by the Issuer from the Medicare Supplement Insurance Policy under which they were covered on December 31, 2005 to that Issuer's most comparable Medicare Supplement Insurance Policy without outpatient prescription drug coverage, where the benefits under the Medicare Supplement Insurance Policy without outpatient prescription drug coverage are the same as the benefits under the Medicare Supplement Insurance Policy with outpatient prescription drug coverage except for outpatient prescription drug coverage, unless the Issuer offers and a Policyholder chooses coverage under another Medicare Supplement Insurance Policy without outpatient prescription drug coverage or the Policyholder elects to remain in the same Medicare Supplement Insurance Policy, but with the outpatient prescription drug coverage eliminated and the premiums adjusted to reflect such elimination of coverage. The rate for such comparable policy shall be the same rate as the Issuer charges all other Policyholders for that Policy on the date of the transfer to the comparable policy.

71.07: continued

(d) In the case where benefits under the Medicare Supplement Insurance Policy without outpatient prescription drug coverage and the benefits under the Medicare Supplement Insurance Policy with outpatient prescription drug coverage differ by more than outpatient prescription drug benefits, and unless the Issuer offers and a Policyholder chooses coverage under another Medicare Supplement Insurance Policy without outpatient prescription drug coverage, the Issuer shall:

1. not transfer the Policyholder to any other Medicare Supplement Insurance Policy;
2. amend the Policyholder's coverage to a "stripped-down policy" that eliminates the outpatient prescription drug coverage; and
3. adjust the premiums to reflect such elimination of coverage.

(e) The coverage provided by the comparable policy or the "stripped-down policy" shall become effective simultaneous with the effective date of Medicare Part D coverage.

(f) The Issuer shall notify all Policyholders affected by this change and shall describe to such Policyholders all the reasons for the respective coverage and rate changes within 15 days of notification of enrollment in Medicare Part D.

71.08: Policy Benefit Standards

(1) A Medicare Supplement Insurance Policy shall not be advertised, solicited, delivered, issued, issued for delivery or renewed, unless the Policy meets the following requirements:

(a) A Medicare Supplement Insurance Policy shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(b) Any Medicare Supplement Insurance 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 and any Medicare Supplement Insurance Policy issued to be effective on or after January 1, 2006 shall provide that benefits will be changed automatically to coincide with any changes required under Massachusetts law regarding mandated benefits; premiums may be modified to correspond with such changes, if approved by the Commissioner in accordance with statutory and regulatory requirements; provided however, that such Policy shall provide that the Insured agrees to the change of benefits and premiums based on changes required under Massachusetts law regarding mandated benefits; provided further that, except as otherwise required by law, all Medicare Supplement Insurance Policies originally issued to be effective prior to January 1, 2006 shall maintain any Guaranteed Renewable fixed drug deductible and the same benefits covered in the original Policy; and provided further that, except as otherwise required by law, all Medicare Supplement Insurance Policies originally issued to be effective prior to January 1, 2020 shall maintain any Guaranteed Renewable benefit to cover the Medicare Part B deductible and the same benefits covered in the original Policy.

(c) No Medicare Supplement Insurance Policy shall contain benefits that duplicate benefits provided by Medicare.

(d) No Medicare Supplement Insurance Policy shall contain any waiting period or pre-existing condition limitation or exclusion.

(e) No Medicare Supplement Insurance Policy shall 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.

(f) Each Medicare Supplement Insurance Policy shall be Guaranteed Renewable in accordance with the provisions of 211 CMR 71.07.

(g) No Medicare Supplement Insurance Policy issued to be effective on or before December 31, 2005, which provides coverage for prescription drugs, shall exclude coverage of any such drug for the treatment of cancer or HIV/AIDS on the ground that the off-label use of the drug has not been approved by the United States Food and Drug Administration for that indication; provided however, that such drug is recognized for treatment of such indication in one of the standard reference compendia; or in the medical literature, as those terms are defined in M.G.L. c. 175, § 47O, or by the Commissioner under the provisions of M.G.L. c. 175, § 47P.

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(h) An Issuer of a Medicare Supplement Insurance Policy shall refund the unearned portion of any premium paid on a quarterly, semi-annual or annual basis upon the death of a Policyholder. An Issuer of a Medicare Supplement Insurance Policy may refund the unearned portion of any premium paid on a quarterly, semi-annual or annual basis in the case of cancellation by the Policyholder for reasons other than death. When calculating all such refunds, an Issuer of a Medicare Supplement Insurance Policy shall convert the billing mode from annual, semi-annual, or quarterly to monthly as of the date of death or cancellation by the Policyholder for reasons other than death and refund the premium paid less the sum of the monthly premiums earned to that point or use a refund methodology submitted to and approved by the Commissioner. All Medicare Supplement Issuers shall notify applicants regarding premium refunds in the required outline of coverage as set forth in 211 CMR 71.13(2)(c)2. Nothing in 211 CMR 71.08(1)(h) shall affect the rights of a Policyholder to return the Policy within 30 days of its delivery and receive a premium refund pursuant to 211 CMR 71.13(1)(e).

(2) For Medicare Supplement Insurance Policies issued to be effective on or after January 1, 2006, the following Medicare Supplement options are mandatory as to standards and benefits and shall not be modified in any manner, except as provided in 211 CMR 71.09 or 71.21. No other Medicare Supplement options may be issued to be effective on or after January 1, 2006.

(a) Medicare Supplement Core. A Medicare Supplement Core Insurance Policy shall provide the coverage as specified by the Commissioner and shall not provide any additional benefits.

(b) Medicare Supplement 1. A Medicare Supplement 1 Insurance Policy shall provide the coverage specified by the Commissioner and shall not provide any additional benefits. Notwithstanding the provisions of any other section, a Medicare Supplement 1 Policy shall not be offered or issued after December 31, 2019 to persons becoming Medicare Eligible Persons on or after January 1, 2020. Subject to the provisions of any other section of law or this regulation, if a company offers persons who became Medicare Eligible Persons prior to January 1, 2020 the option of enrolling in a Medicare Supplement 1A plan, they are required to also offer those persons the option of enrolling in a Medicare Supplement 1 plan. All Medicare Supplement 1 policies in effect on December 31, 2019 shall be renewed, except as identified in 211 CMR 71.07.

(c) Medicare Supplement 1A. Beginning January 1, 2020, a Medicare Supplement 1A Insurance Policy shall provide the coverage specified by the Commissioner and shall not provide any additional benefits. Subject to the provisions of any other section of law or 211 CMR 71.00, if an Issuer offers persons who became Medicare Eligible Persons prior to January 1, 2020 the option of enrolling in a Medicare Supplement 1 plan, they are required to also offer those persons the option of enrolling in a Medicare Supplement 1A plan.

(d) Medicare Supplement 2. A Medicare Supplement 2 Insurance Policy shall provide the coverage specified by the Commissioner and shall not provide any additional benefits. Notwithstanding the provisions of any other section, a Medicare Supplement Insurance Policy with benefits for outpatient prescription drugs, including such benefits provided through Alternate Innovative Benefits Riders shall not be issued after December 31, 2005, but coverage in effect on December 31, 2005 shall be renewed, except as identified in 211 CMR 71.07(5).

(e) Medicare Select. A Medicare Select Insurance Policy shall provide coverage in accordance with the provisions specified in 211 CMR 71.21.

(3) For Medicare Supplement Insurance Policies issued to be effective on or after January 1, 2006, an Issuer offering Medicare Supplement Insurance shall make available to each prospective Policyholder a Policy form containing only Medicare Supplement Core Insurance benefits, in accordance with 211 CMR 71.08(2)(a).

(4) No groups, packages or combinations of Medicare Supplement Insurance benefits other than those listed in 211 CMR 71.08(2) shall be offered for sale to be effective on or after January 1, 2006 in Massachusetts, except as may be permitted in 211 CMR 71.09.

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(5) Benefit plans for Medicare Supplement Insurance Policies issued to be effective on or after January 1, 2006 shall be uniform in structure, language, designation and format to the standard benefit plans listed in 211 CMR 71.08(2) and conform to the definitions in 211 CMR 71.03 and 211 CMR 71.05. Each benefit shall be structured in accordance with the format specified by the Commissioner for a Medicare Supplement Core Policy, a Medicare Supplement 1 Policy and a Medicare Supplement 1A Policy, as applicable, and shall list the benefits in the specified order. For purposes of 211 CMR 71.08, "structure, language, and format" means style, arrangement and overall content of a benefit.

(6) An Issuer of Medicare Supplement Insurance may use, in addition to the benefit plan designations required in 211 CMR 71.08(2), other designations or product names to the extent permitted by law.

(7) Every Issuer shall make available a Medicare Supplement Core Insurance Policy, as described in 211 CMR 71.08(2)(a), to each prospective Policyholder. An Issuer may make available to prospective Insureds any of the other Medicare Supplement Insurance benefit plans for which the prospective Insured is eligible, in addition to the Medicare Supplement Core.

(8) No Issuer participating in the market for Medicare Supplement Insurance shall at any time knowingly permit a newly enrolling Eligible Person to terminate a Medicare Supplement 1 plan and purchase a Medicare Supplement 1A plan offered by that Issuer until the person has been covered under the Medicare Supplement 1 plan for at least a period of 12 months.

71.09: New or Innovative Benefits

An Issuer of Medicare Supplement Insurance may, with the prior approval of the Commissioner, offer Medicare Supplement Insurance Policies with new or innovative benefits described in 211 CMR 71.09 in addition to the benefits provided in a Policy that otherwise complies with the applicable standards set forth in 211 CMR 71.00. The new or innovative benefits may include benefits that are appropriate to Medicare Supplement Insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare Supplement Insurance Policies. Only those new and innovative benefits specified in 211 CMR 71.09 and any other new or innovative benefits approved by the Commissioner may be so offered. Nothing in 211 CMR 71.09 prohibits an Issuer offering a Policy with new or innovative benefits consistent with 211 CMR 71.09 from also providing a Policy of the same Medicare Supplement option type without the new or innovative benefit. Notwithstanding the provisions of any other section, a Medicare Supplement Insurance Policy with benefits for outpatient prescription drugs, including such benefits provided through Alternate Innovative Benefits Riders shall not be issued after December 31, 2005, but coverage in effect on December 31, 2005 shall be renewed, except as identified in 211 CMR 71.07(5).

(1) Individual Case Management. Issuers providing Medicare Supplement Insurance may provide coverage for services in addition to the benefits required by the Commissioner for the applicable Medicare Supplement Core Policy, Medicare Supplement 1 Policy, Medicare Supplement 1A Policy, or Medicare Supplement 2 Policy as part of an individual case management program. Such program must be approved by the Commissioner in advance. Such individual case management program may be established by the Issuer pursuant to a plan of care agreed to by the Insured and the attending physician and approved under the Issuer's individual case management program.

(2) Outpatient Prescription Drug Benefits. In providing the Outpatient Prescription Drug benefits in a Medicare Supplement 2 Insurance Policy, an Issuer may limit benefits to those received from providers with which it has an agreement, provided that such limitation does not significantly reduce the availability of benefits under the Policy; and provided further, that any limitation or exclusion of a provider, and any such agreement, are in accordance with M.G.L. c. 176D, § 3B. For the purposes of 211 CMR 71.09(2), "Outpatient Prescription Drugs" includes insulin, as well as the needles, syringes, pumps and pump supplies necessary for the administration of insulin and blood sugar level testing equipment and supplies

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for use at home; drugs provided by a home infusion therapy provider; and drugs used on an off-label basis for the treatment of cancer or HIV/AIDS and medically necessary services associated with the administration of such drugs as required by M.G.L. c. 175, § 47K; M.G.L. c. 175, § 47L; M.G.L. c. 176A, § 8N; or M.G.L. c. 176B, § 4N, or by M.G.L. c. 175, § 47O; M.G.L. c. 175, § 47P; M.G.L. c. 176A, § 8Q (as added by St. 1996, c. 450, § 222); or by M.G.L. c. 176B, § 4P (as added by St. 1994, c. 60, § 146), and drugs and devices for hormone replacement therapy for peri- and post-menopausal women and for outpatient prescription contraceptive drugs or devices as required by M.G.L. c. 175, § 47W; M.G.L. c. 176A, § 8W or M.G.L. c. 176B, § 4W (as added by St. 2002, c. 49).

(3) Mail Service Prescription Drug Program. Issuers providing Medicare Supplement Insurance Policies may provide coverage for a mail service prescription drug program for Outpatient Prescription Drugs for which federal law requires a prescription in addition to the benefits required by the Commissioner for a Medicare Supplement 2 Insurance Policy. The benefit must be approved by the Commissioner in advance; provided however, that the Insured shall only be charged a copayment and the Insured's copayments for Outpatient Prescription Drugs shall be either:

(a) no higher than $8 for each generic prescription or refill and no higher than $15 for each brand name prescription or refill; or

(b) no higher than $10 for each generic or brand name prescription or refill; and provided, further, that each such prescription or refill shall contain a minimum of 21 days' and a maximum of 90 days' supply.

Nothing in 211 CMR 71.09(3) shall be construed to prevent such an Issuer from basing payment on allowed charges rather than on charges or limiting benefits to those received from providers with whom they have an agreement; provided that such limitation does not significantly reduce the availability of benefits under the Policy; and provided further, that any limitation or exclusion of a provider, and any such agreement, are in accordance with M.G.L. c. 176D, § 3B. For the purposes of 211 CMR 71.09(3), "Outpatient Prescription Drugs" includes insulin, as well as the needles, syringes, pumps and pump supplies necessary for the administration of insulin and blood sugar level testing equipment and supplies for use at home; drugs provided by a home infusion therapy provider; and drugs used on an off-label basis for the treatment of cancer or HIV/AIDS and medically necessary services associated with the administration of such drugs as required by M.G.L. c. 175, § 47K; M.G.L. c. 175, § 47L; M.G.L. c. 176A, § 8N; or M.G.L. c. 176B, § 4N; or by M.G.L. c. 175, § 47O; M.G.L. c. 175, § 47P; M.G.L. c. 176A, § 8Q (as added by St. 1996, c. 450, § 222); or by M.G.L. c. 176B, § 4P (as added by St. 1994, c. 60, § 146); and drugs and devices for hormone replacement therapy for peri- and post-menopausal women and for outpatient prescription contraceptive drugs or devices as required by M.G.L. c. 175, § 47W; M.G.L. c. 176A, § 8W or M.G.L. c. 176B, § 4W (as added by St. 2002, c. 49, §§ 4 and 5).

(4) Alternate Innovative Benefits. Issuers providing Medicare Supplement Insurance may provide alternate innovative benefits consisting of the innovative preventive care benefit described in 211 CMR 71.09(4)(a) or the innovative foreign travel care benefit described in 211 CMR 71.09(4)(b), in addition to the benefits required for a Medicare Supplement Core Insurance Policy, a Medicare Supplement 1 Insurance Policy or a Medicare Supplement 1A Insurance Policy, as applicable, subject to the prior approval of the Commissioner of Insurance. Alternate innovative benefits may be provided within a Medicare Supplement Insurance Policy or by an Alternate Innovative Benefit Rider to a Medicare Supplement Policy, provided, that each Issuer may offer only one combination of the benefits described in 211 CMR 71.09(4)(a) and (b) for each type of Medicare Supplement Insurance Policy. An Alternate Innovative Benefit Rider may be offered only in addition to the applicable Medicare Supplement Insurance Policy form required for a Medicare Supplement Core Insurance Policy, a Medicare Supplement 1 Insurance Policy or a Medicare Supplement 1A Insurance Policy, as applicable.

(a) Innovative Preventive Care Benefit. Such innovative benefit shall contain the following benefits for preventive care:

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1. Preventive Vision Care Benefits, consisting of coverage for routine vision exams, including refractions, to determine the need for corrective lenses and related vision care supplies. These preventive vision care benefits may be limited to: one routine vision exam every two calendar years; and up to a benefit maximum of no less than $100 every two calendar years for frames and/or prescription lenses (or contact lenses). Nothing in 211 CMR 71.09(4)(a)1. shall be construed to prevent an Issuer from basing payment on allowed charges rather than on charges or limiting benefits to those received from an ophthalmologist or an optometrist with whom it has an agreement; provided that such limitation does not significantly reduce the availability of benefits under the Policy.

2. Dental Care Benefits, consisting of coverage for routine dental services that may be limited to no less than one cleaning every six months. Nothing in 211 CMR 71.09(4)(a)2. shall be construed to prevent an Issuer from basing payment on allowed charges rather than on charges or limiting benefits to those received from a dentist with whom it has an agreement; provided that such limitation does not significantly reduce the availability of benefits under the Policy.

3. Preventive Hearing Care Benefits, consisting of coverage for routine hearing exams and hearing aids. These preventive hearing care benefits may be limited to: one routine hearing exam every two calendar years; and up to a benefit maximum of no less than $200 every two calendar years for one hearing aid (or one set of binaural hearing aids), including dispensing fees, acquisition costs, batteries and repairs. Nothing in 211 CMR 71.09(4)(a)3. shall be construed to prevent an Issuer from basing payment on allowed charges rather than on charges or limiting benefits to those received from a provider or a hearing aid dealer with whom it has an agreement.

4. Fitness or Weight Loss Program Benefits, consisting of reimbursement of no less than $150 each calendar year incurred in dues or membership fees for membership or exercise classes at a health club and/or reimbursement of no less than $150 each calendar year incurred in dues or fees for weight loss program membership or classes. Nothing in 211 CMR 71.09(4)(a)4. shall be construed to prevent an Issuer from limiting fitness benefits to reimbursement for dues or membership fees for membership or exercise classes at a health club with which it has an agreement or which it designates as approved, provided that such limitation does not significantly reduce the availability of benefits under the Policy. Nothing in 211 CMR 71.09(4)(b)4. shall be construed to prevent an Issuer from limiting weight loss program benefits to reimbursement for dues or fees for membership or classes at any hospital-based weight loss program and at any non-hospital-based weight loss program with which the Issuer has an agreement or which it designates as approved, provided that such limitation does not significantly reduce the availability of benefits under the Policy.

(b) Innovative Foreign Travel Benefit. Such innovative benefit shall, for those insureds traveling outside the United States and its territories, provide coverage for the same services and the same level of payment as is provided within the United Stated by the combination of Medicare Part A and Part B and the Medicare Supplement Core Insurance Policy, less any Medicare payments.

71.10: Open Enrollment and Guarantee Issue for Medicare Supplement Insurance

(1) No Issuer participating in the market for Medicare Supplement Insurance shall at any time deny or condition the issuance of any Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider for sale in Massachusetts, nor discriminate in the pricing of such a plan, to any Eligible Person because of the age, health status, claims experience, receipt of health care, medical condition, or genetic information of the Eligible Person. No Issuer participating in the market for Medicare Supplement Insurance shall require genetic tests or private genetic information as a condition of the issuance or renewal of a Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider.

(2) No Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider may contain any waiting period or preexisting condition limitation or exclusion.

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(3) Required Part B Open Enrollment Period. An Issuer of Medicare Supplement Insurance shall not deny or condition the issuance or effectiveness of any Medicare Supplement Insurance Policy available for sale in Massachusetts, nor any Alternate Innovative Benefit Rider, nor discriminate in the pricing of such a Policy because of the health status, claims experience, receipt of health care, or medical condition of an Applicant in the case of an application for a Policy for which the Applicant is eligible that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider currently available from an Issuer shall be made available to all Eligible Persons who apply and who qualify under 211 CMR 71.10(3), except as provided in 211 CMR 71.10(11). Notwithstanding 211 CMR 71.10(3), a Medicare Supplement 1 Insurance Policy may only be offered to Medicare Eligible persons if the individual has also:

(a) attained 65 years of age before January 1, 2020; or

(b) first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020.

(4) Required Open Enrollment Period for Those Initially Eligible for Coverage. An Issuer participating in the market for Medicare Supplement Insurance shall not deny or condition the issuance or effectiveness of any Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider, nor discriminate in the pricing of such Policy or Alternate Innovative Benefit Rider to an Eligible Person in the case of an application of such Policy or Alternate Innovative Benefit Rider that is submitted prior to or during the six-month period beginning with the first day of the first month in which the Eligible Person became Initially Eligible for Coverage. Each Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider currently available from the Issuer shall be made available to all Eligible Persons who qualify under 211 CMR 71.10(4), except as provided in 211 CMR 71.10(10). Notwithstanding the above, a Medicare Supplement 1 Insurance Policy may not be offered to Medicare Eligible persons if the individual has not also:

(a) attained 65 years of age before January 1, 2020; or

(b) first become eligible for Medicare due to age, disability or end-stage renal disease before January 1, 2020.

(5) Required Annual Open Enrollment Period.

(a) Every Issuer participating in the market for Medicare Supplement Insurance shall make available during the required annual open enrollment period to every Eligible Person each Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider, currently available from the Issuer for whom an application for such Policy is submitted during the required annual open enrollment period by the Eligible Person except as provided in 211 CMR 71.10(10). The required annual open enrollment period for Eligible Persons shall commence on February 1st and end on March 31st of each year, for coverage to be effective June 1st of that year or no later than when Medicare coverage is first effective, whichever is earlier.

(b) For annual open enrollment periods, every Issuer participating in the market for Medicare Supplement Insurance shall provide its Insureds or Members with written notice no later than January 1st of each such calendar year which provides, at least, the following information in easy to understand language:

1. an explanation of the existence of the annual open enrollment period which will be held during February and March of that year, the deadline of March 31st for applications, and effective date for new coverage of June 1st of that year;

2. notification that persons who became Medicare Eligible prior to January 1, 2020 and who enroll in Medicare Supplement 1 plans on and after January 1, 2020 will only be permitted to switch enrollment to a Medicare Supplement 1A plan in the same company after those persons have been covered by the Medicare Supplement 1 plan for at least a 12-month period, except in the situation where the Commissioner notifies Issuers that there will be a Required Open Enrollment Period during the course of the plan year; and

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3. notification that the Insured or Member may request a list of all Issuers which have available Medicare Supplement Insurance Policy forms as of January 1st of that calendar year by contacting the Massachusetts Division of Insurance at 1000 Washington St., Suite 810, Boston, MA 02118-6200, telephone number 1-877-563-4467; or the Executive Office of Elder Affairs, One Ashburton Place, Room 517, Boston, MA 02108, telephone number 1-800-243-4636;

(6) Required Open Enrollment Period Due to Termination of HMO Medicare Part C Contract. In the event that a Health Maintenance Organization's Medicare Part C Contract with Medicare has been terminated, during an open enrollment period scheduled and authorized by the Commissioner, every Issuer participating in the market for Medicare Supplement Insurance and every Health Maintenance Organization participating in the market for Evidences of Coverage Issued Pursuant to a Medicare Part C Contract with Medicare shall make available to every Eligible Person each Medicare Supplement Insurance Policy, Alternate Innovative Benefit Rider or Evidence of Coverage currently available from the Issuer or Health Maintenance Organization if the Eligible Person's Evidence of Coverage Issued Pursuant to a Medicare Part C Contract with Medicare was canceled or not renewed because the Health Maintenance Organization's Medicare Part C Contract with Medicare has been terminated, except as provided in 211 CMR 71.10(10). Such coverage shall comply with all the provisions of 211 CMR 71.00 and shall become effective on the date that coverage under the Medicare Part C Contract with Medicare ends. The Commissioner will notify all Issuers and Health Maintenance Organizations subject to 211 CMR 71.10(6) of the time period for the open enrollment period described in 211 CMR 71.10(6) as soon as practicable. The length of the open enrollment period under 211 CMR 71.10(6) shall be set by the Commissioner as he or she deems to be warranted to ensure that all Applicants have a reasonable opportunity to obtain coverage.

(7) Required Open Enrollment Period Established under Administrative Supervision of an Issuer. In the event that the Commissioner assumes administrative supervision of an Issuer in accordance with M.G.L. c. 175J, and he or she orders the Issuer to reduce, suspend or limit the volume of business being accepted or renewed, including Medicare Supplement Insurance or Alternate Innovative Benefit Riders, during an open enrollment period scheduled and authorized by the Commissioner, every Issuer participating in the market for Medicare Supplement Insurance and Alternate Innovative Benefit Rider shall make available to every Eligible Person each Medicare Supplement Insurance Policy and Alternate Innovative Benefit Rider for which the Eligible Person is eligible that is currently available from the Issuer if the Eligible Person's Policy or Alternate Innovative Benefit Rider was canceled or not renewed in compliance with the Commissioner's order in accordance with 211 CMR 71.10(7), except as provided in 211 CMR 71.10(10). Such coverage shall comply with all the provisions of 211 CMR 71.00 and shall become effective on the date that coverage under the Medicare Part C Contract with Medicare Policy or Rider ends. The Commissioner will notify all Issuers subject to 211 CMR 71.10(7) of the time period for the open enrollment period described in 211 CMR 71.10(7) as soon as practicable. The length of the open enrollment period under 211 CMR 71.10(7) shall be set by the Commissioner as he or she deems to be warranted to ensure that all Applicants have a reasonable opportunity to obtain coverage.

In the event of the placing of an Issuer in administrative supervision, conservation, rehabilitation, reorganization, liquidation or any other similar proceeding by a governmental or public authority, the Commissioner may also establish a Required Open Enrollment Period as provided in 211 CMR 71.10(7) to provide for the availability of coverage for every Eligible Person whose Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider is canceled or not renewed by reason of such a rehabilitation, reorganization or liquidation.

(8) Optional Periodic Open Enrollment Periods. In addition to the required open enrollment periods outlined in 211 CMR 71.10(3) through (7), Issuers may hold additional open enrollment periods at other times of the year for Eligible Persons provided that each such open enrollment period is of a length of time of not less than 60 consecutive days. Each Issuer electing to schedule open enrollment periods under 211 CMR 71.10(8) shall file a statement with the Commissioner describing the beginning and ending dates for the Issuer's open enrollment periods. Any open enrollment period held under 211 CMR 71.10(8) must comply with all of the requirements of 211 CMR 71.00. Each Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider currently available from the Issuer shall be made available to all Eligible Persons who submit applications during the open enrollment periods held under 211 CMR 71.10(8), except as provided in 211 CMR 71.10(10).

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Notwithstanding any other provisions of 211 CMR 71.00, a Medicare Supplement 1 Insurance Policy may not be offered to Medicare Eligible persons after January 1, 2020, unless the individual has also:

(a) attained 65 years of age before January 1, 2020; or

(b) first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020. Further notwithstanding any other provisions of 211 CMR 71.00, no Issuer participating in the market for Medicare Supplement Insurance shall at any time knowingly permit a newly enrolling Eligible Person to terminate a Medicare Supplement 1 plan and purchase a Medicare Supplement 1A plan offered by that Issuer until the person has been covered under the Medicare Supplement 1 plan for at least a period of 12 months.

(9) Optional Continuous Open Enrollment. In addition to the required open enrollment periods outlined in 211 CMR 71.10(3) through (7), Issuers may elect to maintain continuous open enrollment for Eligible Persons. Each Issuer electing to schedule continuous open enrollment under 211 CMR 71.10(9) shall file a statement with the Commissioner describing the beginning date for the Issuer's continuous open enrollment. Such statement must be filed with the Commissioner at least 30 days prior to the beginning of such continuous open enrollment. Any Issuer that chooses to cease continuous open enrollment under 211 CMR 71.10(9) shall notify the Commissioner in writing at least 60 days prior to the ending date for such continuous open enrollment. Each Issuer shall provide at least 30 days' notice of such open enrollment period and any termination of the open enrollment period to its Insureds or Members. Any continuous open enrollment held under 211 CMR 71.10(9) must comply with all of the requirements of 211 CMR 71.00. Each Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider currently available from the Issuer shall be made available to all Eligible Persons who submit applications during the continuous open enrollment held under 211 CMR 71.10(9), except as provided in 211 CMR 71.10(10).

Notwithstanding any other provisions of 211 CMR 71.00, a Medicare Supplement 1 Insurance Policy may not be offered to Medicare Eligible persons unless the individual has also:

(a) attained 65 years of age before January 1, 2020; or

(b) first become eligible for Medicare due to age, disability or end-stage renal disease, before January 1, 2020. Further notwithstanding any other provisions of 211 CMR 71.00, no Issuer participating in the market for Medicare Supplement Insurance shall at any time knowingly permit a newly enrolling Eligible Person to terminate a Medicare Supplement 1 plan and purchase a Medicare Supplement 1A plan offered by that Issuer until the person has been covered under the Medicare Supplement 1 plan for at least a period of 12 months.

(10) Notwithstanding the provisions in 211 CMR 71.10(3) through (9), an Issuer participating in the market for Medicare Supplement Insurance that only has available Certificate forms for issuance in Massachusetts that are issued under one or more group Medicare Supplement Insurance Policies, and which does not have available Medicare Supplement Insurance Policy forms for issuance to individuals in Massachusetts, shall not be required to issue a Medicare Supplement Insurance Policy to an Eligible Person who is not a member and is not eligible to be a member of the group or groups to which the Issuer has issued the group Medicare Supplement Insurance Policy or Policies; provided however, that requirements to become a member in the group or groups are not based on health status, claims experience, receipt of health care or medical condition. Notwithstanding 211 CMR 71.10(10), a Medicare Supplement 1 Insurance Policy may not be offered to Medicare Eligible Persons if the individual has not also:

(a) attained 65 years of age before January 1, 2020; or

(b) first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020.

(11) Required Open Enrollment Period Due to Entry into Market. In the event that during the months of February through November an Issuer enters the market for Medicare Supplement Insurance and is unable to participate in the full two-month required annual open enrollment period specified in 211 CMR 71.10(5) held during the calendar year of the entry into the market, the Issuer shall hold a special open enrollment period upon entry into the market. Such special open enrollment period shall conform to the requirements of the required annual open enrollment period set forth in 211 CMR 71.10(5), except those pertaining to the starting date for the open enrollment period, subject to the Commissioner's approval. For the purposes of 211 CMR 71.10(11), "enters the market" shall mean that the Issuer is offering, selling, issuing, delivering, or otherwise making effective a Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider in compliance with 211 CMR 71.00 either:

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(a) for the first time; or
(b) upon reentry into the market in accordance with 211 CMR 71.22(3).

(12) Guaranteed Issue for Eligible Persons under Section 4031 of the Federal Balanced Budget Act of 1997, Section 501(a)(1) of the Federal Balanced Budget Refinement Act of 1999 and Benefit Improvement and Patient Protection Act of 2000.

(a) Guaranteed Issue.

1. An Eligible Person, as defined by 211 CMR 71.03, who is an eligible person under Section 4031 of the federal Balanced Budget Act of 1997 (BBA Eligible Person) and Section 501(a)(2) of the federal Balanced Budget Refinement Act of 1999, are those individuals described in 211 CMR 71.10(12)(b), who seek to enroll under the Policy during the period specified in 211 CMR 71.10(12)(c) and who submit evidence of the date of termination or disenrollment with the application for a Medicare Supplement Insurance Policy.

2. With respect to BBA Eligible Persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare Supplement Insurance Policy described in 211 CMR 71.10(12)(e) that is offered and is available for issuance to new enrollees by the issuer, except as set forth in 211 CMR 71.10(12)(a)3., shall not discriminate in the pricing of such a Medicare Supplement Insurance Policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare Supplement Insurance Policy.

3. If a BBA Eligible Person also meets the requirements of being Initially Eligible for Coverage, as defined in 211 CMR 71.03, and if the individual has also:

a. attained 65 years of age before January 1, 2020; or

b. first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020, then the individual shall be entitled to guarantee issue of all plans currently available from an Issuer as specified in 211 CMR 71.10(4), including the time periods specified. If a BBA Eligible Person also meets the requirements of being Initially Eligible for Coverage, as defined in 211 CMR 71.03, but if the individual has not:

(i) attained 65 years of age before January 1, 2020; or

(ii) first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020, then the individual shall be entitled to guarantee issue of all plans currently available from an Issuer as specified in 211 CMR 71.10(4), including the time periods specified, except for Medicare Supplement 1 plans, for which such persons are not eligible.

(b) BBA Eligible Person. A BBA Eligible Person is an individual who meets the definition of Eligible Person found in 211 CMR 71.03 and who is described in any of the following paragraphs:

1. The individual is enrolled under an Employee Welfare Benefit Plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

2. The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All Inclusive Care for the Elderly (PACE) provider under the Social Security Act § 1894, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

a. The certification of the organization or plan under this part has been terminated; or

b. The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

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c. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in the federal Social Security Act § 1851(g)(3)(B) (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under the federal Social Security Act § 1856), or the plan is terminated for all individuals within a residence area;

d. The individual demonstrates, in accordance with guidelines established by the Secretary, that:

i. The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards;

ii. The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

iii. The individual meets such other exceptional conditions as the Secretary may provide.

3. a. The individual is enrolled with:

i. An eligible organization under a contract under the federal Social Security Act § 1876 (Medicare Cost);

ii. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

iii. An organization under an agreement under the federal Social Security Act § 1833(a)(1)(A) (health care prepayment plan); or

iv. An organization under a Medicare Select Policy; and

b. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under 211 CMR 71.10(12)(b)2.

4. The individual is enrolled under a Medicare Supplement Insurance Policy and the enrollment ceases because:

a. i. Of the insolvency of the Issuer or bankruptcy of the nonissuer organization; or

ii. Of other involuntary termination of coverage or enrollment under the Policy;

b. The Issuer of the Policy substantially violated a material provision of the Policy; or

c. The Issuer, or an agent or other entity acting on the Issuer's behalf, materially misrepresented the Policy's provisions in marketing the Policy to the individual;

5. a. The individual was enrolled under a Medicare Supplement Insurance Policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under the federal Social Security Act § 1876 (Medicare Cost), any similar organization operating under demonstration project authority, any PACE provider under the federal Social Security Act § 1894 or a Medicare Select Policy; and

b. The subsequent enrollment under 211 CMR 71.10(12)(b)5.a. is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under the federal Social Security Act § 1851(e)).

6. The individual, upon first becoming eligible for benefits under part A of Medicare at 65 years of age, enrolls in a Medicare Advantage plan under part C of Medicare or in a PACE program under the federal Social Security Act § 1894, and disenrolls from the plan or program by not later than 12 months after the effective date of enrollment.

71.10: continued

(c) Guaranteed Issue Time Periods.

1. In the case of an individual as described in 211 CMR 71.10(12)(b)1., the guaranteed issue period begins on the date of the individual receives a notice of termination or cessation of all supplemental health benefits (or, if such notice is not received, notice that a claim has been denied because of such a termination or cessation) and ends 63 days after the date of the applicable notice;

2. In the case of an individual described in 211 CMR 71.10(12)(b)2., 3., 5.a., or 6. whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated;

3. In the case of an individual described in 211 CMR 71.10(12)(b)4.a. the guaranteed issue period begins on the earlier of:

a. the date that the individual receives a notice of termination, a notice of the issuers bankruptcy or insolvency, or other such similar notice, if any; and

b. the date that the applicable coverage is terminated, and ends 63 days after the coverage is terminated;

4. In the case of an individual described in 211 CMR 71.10(12)(b)2., 4.b., 4.c., 5.a. or 6. who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends 63 days after the effective date; and

5. In the case of an individual described in 211 CMR 71.10(12)(b), but not described in the preceding provisions of 211 CMR 71.10(12)(c), the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

(d) Extended Medigap Access for Interrupted Trial Periods.

1. In the case of an individual described in 211 CMR 71.10(12)(b)5. (or deemed to be so described, pursuant to 211 CMR 71.10(12)(d)) whose enrollment with an organization or provider described in 211 CMR 71.10(12)(b)5.a. involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in 211 CMR 71.10(12)(b)5.

2. In the case of an individual described in 211 CMR 71.10(12)(b)6. (or deemed to be so described, pursuant to 211 CMR 71.10(12)(d)) whose enrollment with a plan or in a program described in 211 CMR 71.10(12)(b)6. is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in 211 CMR 71.10(12)(b)6.

3. For purposes of 211 CMR 71.10(12)(b)5. and 6., no enrollment of an individual with an organization or provider described in 211 CMR 71.10(12)(b)5.a., or with a plan or in a program described in 211 CMR 71.10(12)(b)6., may be deemed to be an initial enrollment under 211 CMR 71.10(12)(d) after the two-year period beginning on the date on which the individual first enrolled with such organization, provider, plan, or program.

(e) Products to Which BBA Eligible Persons are Entitled. The Medicare Supplement Insurance Policy to which BBA eligible persons are entitled under:

1. 211 CMR 71.10(12)(b)1., 2., 3. and 4. is a Medicare Supplement Core Insurance Policy or a Medicare Supplement 1 Insurance Policy offered by any Issuer if the individual has also:

a. attained 65 years of age before January 1, 2020; or

b. first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020. If the individual has not:

(i) attained 65 years of age before January 1, 2020; or

(ii) first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020, then the individual shall be entitled to all plans currently available from an Issuer as specified in 211 CMR 71.10(4), except for Medicare Supplement 1 plans.

2. a. 211 CMR 71.10(12)(b)5. is the same Medicare Supplement Insurance Policy in which the individual was most recently previously enrolled, if available from the same Issuer or, if not so available, a Policy described in 211 CMR 71.10(12)(e)1.

71.10: continued

b. After December 31, 2005, if the individual was most recently enrolled in a Medicare Supplement Insurance Policy with an outpatient prescription drug benefit, a Medicare Supplement Insurance Policy is a Medicare Supplement Core Insurance Policy, Medicare Supplement 1 Insurance Policy, or a Medicare Select Insurance Policy offered by any insurer if the individual has also:

(i) attained 65 years of age before January 1, 2020; or

(ii) first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020. If the individual has not:

i. attained 65 years of age before January 1, 2020; or

ii. first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020, then the individual shall be entitled to all plans currently available from an Issuer as specified in 211 CMR 71.10(4), except for Medicare Supplement 1 plans.

3. 211 CMR 71.10(12)(b)6. shall include any Medicare Supplement Insurance Policy offered by any Issuer if the individual has also:

a. attained 65 years of age before January 1, 2020; or

b. first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020. If the individual has not:

(i) attained 65 years of age before January 1, 2020; or

(ii) first become eligible for Medicare due to age, disability, or end-stage renal disease before January 1, 2020, then the individual shall be entitled to all plans currently available from an Issuer as specified in 211 CMR 71.10(4), except Medicare Supplement 1 plans.

(f) Notification Provisions.

1. At the time of an event described in 211 CMR 71.10(12)(b) because of which an individual loses coverage or benefits due to the termination of a contract or agreement, Policy, or plan, the organization that terminates the contract or agreement, the Issuer terminating the Policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under 211 CMR 71.10(12), and of the obligations of issuers of Medicare Supplement Insurance Policies under 211 CMR 71.10(12)(a). Such notice shall be communicated contemporaneously with the notification of termination.

2. At the time of an event described in 211 CMR 71.10(12)(b) because of which an individual ceases enrollment under a contract or agreement, Policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the Issuer offering the Policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under 211 CMR 71.10(12)(f), and of the obligations of issuers of Medicare Supplement Insurance Policies under 211 CMR 71.10(12)(a). Such notice shall be communicated within ten working days of the Issuer receiving notification of disenrollment.

(13) Guaranteed Coverage for Eligible Persons Consistent with the MMA.

(a) Guaranteed Coverage.

1. Eligible Persons, as defined by 211 CMR 71.03, who are eligible persons under the MMA, are those individuals described in 211 CMR 71.10(13)(b), who seek to enroll under the Policy during the period specified in 211 CMR 71.10(13)(c) and who submit evidence of enrollment in Medicare Part D along with the application for a Medicare Supplement Insurance Policy.

2. With respect to MMA Eligible Persons, an Issuer shall not deny or condition the coverage or effectiveness of a Medicare Supplement Insurance Policy described in 211 CMR 71.10(13)(d), shall not discriminate in the pricing of such a Medicare Supplement Insurance Policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare Supplement Insurance Policy.

3. If MMA Eligible Persons also meet the requirements of being Initially Eligible for Coverage, as defined in 211 CMR 71.03, the individuals shall be entitled to guaranteed coverage under all Policies currently available from an Issuer as specified in 211 CMR 71.10(4), including the time periods specified.

71.10: continued

(b) MMA Eligible Person. MMA Eligible Persons are individuals who meet the definition of Eligible Person found in 211 CMR 71.03 and who enroll in a Medicare Part D plan during the initial enrollment period and, who at the time of enrollment in Part D,

1. were enrolled under a Medicare Supplement Insurance Policy with an outpatient prescription drug benefit; and
2. terminate enrollment in that Medicare Supplement Insurance Policy; and
3. submit evidence of enrollment in Medicare Part D along with the application for a Policy described in 211 CMR 71.10(13)(d).

(c) Guaranteed Coverage Time Periods. In the case of an individual described in 211 CMR 71.10(13)(b), the guaranteed coverage period begins on the date the individual receives notice pursuant to the federal Social Security Act § 1882(v)(2)(B) from the Medicare Supplement Insurance Issuer during the 60-day period immediately preceding the initial Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D.

(d) Products to Which MMA Eligible Persons are Entitled. The Medicare Supplement Insurance Policy to which MMA Eligible Persons are entitled under 211 CMR 71.10(13)(b) is a Medicare Supplement Core Insurance Policy, or a Medicare Supplement 1 Insurance Policy from the same Issuer that issued the individual's Medicare Supplement Insurance Policy with outpatient prescription drug coverage. In the event that an Issuer has never issued a Medicare Supplement Core Insurance Policy or a Medicare Supplement 1 Insurance Policy, the Medicare Supplement Insurance Policy to which MMA Eligible Persons are entitled under 211 CMR 71.10(13)(b) is any Medicare Supplement Insurance Policy without outpatient prescription drug coverage from the same Issuer that issued the individual's Medicare Supplement Insurance Policy with outpatient prescription drug coverage.

71.11: Standards for Claims Payment

(1) An Issuer of Medicare Supplement Insurance shall comply with the Social Security Act § 1882(c)(3) (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Pub. L. No. 100-203) by:

(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) Paying the participating physician or supplier directly;

(d) Furnishing, at the time of enrollment, each enrollee with a card listing the Policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(e) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(f) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

(2) Compliance with the requirements set forth in 211 CMR 71.11(1) shall be certified on the Medicare Supplement Insurance experience reporting form.

71.12: Policy Filings for Medicare Supplement Insurance and Rate Review

(1) (a) An Issuer shall not offer, sell, deliver or issue for delivery, or otherwise make effective, or renew a Medicare Supplement Insurance Policy defined in 211 CMR 71.08(2) or an Alternate Innovative Benefit Rider defined in 211 CMR 71.09(5) to a resident of Massachusetts, unless the Policy form has been filed with and approved by the Commissioner.

(b) An Issuer shall not offer, sell, deliver or issue for delivery, or otherwise make effective, or renew a Medicare Supplement Insurance Policy defined in 211 CMR 71.08(2) or an Alternate Innovative Benefit Rider defined in 211 CMR 71.09(5) to a resident of Massachusetts, unless the rates therefor have been filed with and approved by the Commissioner.

71.12: continued

(c) An Issuer shall not use or change premium rates for a Medicare Supplement Insurance Policy defined in 211 CMR 71.08(2) or an Alternate Innovative Benefit Rider defined in 211 CMR 71.09(5) and issued in accordance with the provisions of 211 CMR 71.12, unless the rates use a Community Rating method which has been approved by the Commissioner.

(d) An Issuer shall not use or change premium rates for a Medicare Supplement Insurance Policy defined in 211 CMR 71.08(2) or Alternate Innovative Benefit Rider defined in 211 CMR 71.09(5), unless the rates, rating schedule and supporting documentation have been filed with and approved by the Commissioner in accordance with the filing requirements and procedures prescribed in 211 CMR 71.12. An Issuer may file the rate for an Alternate Innovative Benefit Rider separately from the associated Medicare Supplement Insurance Policy or may file a single rate for the Alternate Innovative Benefit Rider and the Medicare Supplement Insurance Policy with which it is associated.

(2) An Issuer shall not change premium rates for a Medicare Supplement Insurance Policy originally issued to be effective prior to January 1, 1995, unless the rates, rating schedule and supporting documentation have been filed with and approved by the Commissioner in accordance with the filing requirements and procedures prescribed in 211 CMR 71.12.

(3) An Issuer may use a Community Rating method to rate a Medicare Supplement Insurance Policy originally issued to be effective prior to January 1, 1995 subject to the prohibition against altering contractual terms as provided in M.G.L. c. 176K, § 9.

(4) (a) Except as provided in 211 CMR 71.12(4)(b), an Issuer shall not file for approval more than one form of a Policy of each type of standard Medicare Supplement benefit plan and shall not file for approval more than one form of Alternate Innovative Benefit Rider for each type of standard Medicare Supplement benefit plan.

(b) An Issuer may offer, with the approval of the Commissioner, except where otherwise prohibited by statute, up to two additional Policy forms of the same type for the same standard Medicare Supplement benefit plan, one for each of the following cases:

1. The inclusion of new or innovative benefits;
2. The addition of either direct response or agent marketing methods.

(c) For the purposes of 211 CMR 71.12, a "type" means an individual Medicare Supplement Insurance Policy or a group Medicare Supplement Insurance Policy.

(5) Except as provided in 211 CMR 71.06(5) and 71.12(5)(a), an Issuer shall continue to make available for purchase any Medicare Supplement Insurance Policy form issued on or after January 1, 1995 that has been approved by the Commissioner. A Policy form shall not be considered to be available for purchase, unless the Issuer has actively offered it for sale in the previous 12 months.

(a) Subject to the requirements of 211 CMR 71.08(3), an Issuer may discontinue the availability of a Medicare Supplement Insurance Policy form or Alternate Innovative Benefit Rider form if the Issuer provides to the Commissioner in writing its decision at least 30 days prior to discontinuing the availability of the form of the Policy. After receipt of the notice by the Commissioner, the Issuer shall no longer offer for sale the Policy form in Massachusetts. Nothing in 211 CMR 71.12(5) shall relieve an Issuer from the requirements of 211 CMR 71.22.

(b) An Issuer that discontinues the availability of a Medicare Supplement Insurance Policy form pursuant to 211 CMR 71.12(5)(a) shall not file for approval a new Policy form of the same type for the same standard Medicare Supplement benefit plan as the discontinued form for a period of five years after the Issuer provides notice to the Commissioner of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate.

(c) An Issuer that discontinues the availability of an Alternate Innovative Benefits Rider form pursuant to 211 CMR 71.12(5)(a) shall not file for approval a new Alternate Innovative Benefits Rider with the same benefits as the discontinued form for a period of five years after the Issuer provides notice to the Commissioner of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate. For the purposes of 211 CMR 71.12(5)(c), amendments to an existing Alternate

71.12: continued

Innovative Benefits Rider will be considered to be a discontinuance only if the Issuer removes all the benefits for alternative prescription drugs as described in 211 CMR 71.09(5)(a), all the benefits for alternative preventive care as described in 211 CMR 71.09(5)(b) or all the benefits for alternative foreign travel described in 211 CMR 71.09(5)(c) from the previously approved benefits in an Alternate Innovative Benefits Rider.

(d) The sale or other transfer of Medicare Supplement business to another Issuer shall be considered a discontinuance for the purposes of 211 CMR 71.12(5).

(e) A change in the rating structure or methodology shall be considered a discontinuance under 211 CMR 71.12(5)(a) and (b), unless the Issuer complies with the following requirements:

1. The Issuer provides an actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.
2. The Issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The Commissioner may approve a change to the differential that is in the public interest.

(6) Except as provided in 211 CMR 71.12(5)(d), the experience of all Policy forms of the same type in a standard Medicare Supplement benefit plan issued on or after July 30, 1992, and the experience of all Medicare Supplement Insurance Policy forms providing substantially the same coverage issued prior to July 30, 1992, shall be combined for purposes of the refund or credit calculation prescribed in 211 CMR 71.12(12).

(7) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(8) Medicare Supplement Insurance Policy Forms.

(a) All submissions shall be submitted in a form specified by the Commissioner.

(b) The statutory filing fee shall accompany each Medicare Supplement Insurance Policy form, or Alternate Innovative Benefit Rider form if filed separately, submitted each time it is submitted, whether for preliminary or final review according to the Division's filing fee instructions.

(c) Each submission shall be accompanied by the specified checklist.

(d) Each form submitted for final approval must be printed, be a printer's proof, or be in the form in which it will be issued.

(e) Any form in which the printed text has been altered will not be accepted for review or final approval.

(f) Each form shall display an identification code on the lower left-hand corner of the first page.

(g) Each submission shall be accompanied by a cover letter that states whether the form is new or replaces an approved or previously filed form or forms.

(h) The submission of a rider, application or endorsement shall specify the Policy or group of Policies with which it will be used. The identification code of such Policy or group of Policies shall be given together with, if possible, the approximate date of the original filing to expedite review. If a new form makes reference to the provisions of a form previously used that did not require filing or approval, it shall be accompanied by such previous form for reference purposes.

(i) Revisions shall not be made by rider, endorsement or amendment, except with prior approval of the Commissioner. No such riders, endorsements or amendments shall be submitted for approval, unless the Issuer is notified in advance by the Commissioner that revision by rider, endorsement or amendment is permissible.

(j) All submitted material shall be filled in with appropriate hypothetical data.

(k) Applications to be attached to Policy forms upon issue must be attached to such forms upon submission. If such an application was previously filed and approved, the approximate date of such approval must be noted, if possible. Policy outlines of coverage prescribed in 211 CMR 71.13 must also be filed with the corresponding Policy forms; as well as application forms and notices pursuant to 211 CMR 71.14.

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(l) If a form replaces a previously approved or filed form, the identification code of the replaced form must be given and differences from the text of the replaced form must be noted. Where an entire form has been rewritten to improve its readability, a general description of changes is sufficient. Substantive changes shall be carefully noted.

(m) If a form was previously disapproved, this fact must be specifically identified within the filing with the reasons why the form is resubmitted.

(n) Each submission must include a certification by a company official that each form and outline of coverage comply with all applicable laws and regulations including, but not limited to, 211 CMR 71.00 and the objective standards of M.G.L. c. 175, § 2B; as well as a certification by a company official that each form meets the minimum Flesch score requirements established by M.G.L. c. 175, § 2B. If an Issuer contends that a form is exempt from M.G.L. c. 175, § 2B, the basis for this contention must be stated in the cover letter.

(o) No Medicare Supplement Insurance Policy shall be offered, sold, delivered or issued for delivery, or otherwise made effective, or renewed in Massachusetts which provides benefits which duplicate benefits provided by Medicare. Except as otherwise approved by the Division, no such Policy shall provide lower benefits than are required by 211 CMR 71.00, except where duplication of Medicare benefits would otherwise result.

(p) As soon as practicable, but prior to the effective date of any changes in benefits provided by Medicare, Massachusetts laws regarding mandated health benefits and/or by the Medicare Supplement Insurance Policy, every Issuer shall file with the Division, in accordance with applicable filing procedures, any appropriate riders, endorsements or Policy forms needed to accomplish such Medicare Supplement Insurance modifications. Any such riders, endorsements or Policy forms shall provide a clear description of the Medicare Supplement benefits provided by the Policy.

(q) Within 90 days of the effective date of any changes in benefits provided by Medicare, Massachusetts laws regarding mandated health benefits and/or by the Medicare Supplement Insurance Policy, every Issuer shall have on file new Medicare Supplement Insurance Policies that eliminate any duplication of benefits provided by Medicare. Each filing shall provide a clear description of the Policy benefits.

(9) Rate Manual. Every Issuer shall maintain on file with the Division an up-to-date rate manual for all Medicare Supplement Insurance Policies, riders, and endorsements currently available for sale in Massachusetts.

(10) Rate Filings.

(a) Rate Filings for Medicare Supplement Insurance.

1. An Issuer shall submit a rate filing for any Medicare Supplement Insurance Policy described in 211 CMR 71.08(2) or Alternate Innovative Benefit Rider described in 211 CMR 71.09(5) for which the Issuer seeks an initial rate or a change in rates, or any Medicare Supplement Insurance Policy issued to be effective prior to January 1, 1995 to a resident of Massachusetts for which the Issuer seeks a change in rates. All rate filings must comply with the provisions of 211 CMR 71.12(10).

2. Every Issuer desiring to increase or decrease premiums for any Medicare Supplement Insurance Policy, or desiring to set the initial premium for a new Medicare Supplement Insurance Policy described set forth in 211 CMR 71.08(2) or Alternate Innovative Benefit Rider described in 211 CMR 71.09(5) shall, in accordance with applicable filing procedures, file with the Division a rate filing which complies with the provisions of 211 CMR 71.12(10).

3. For any Medicare Supplement Insurance Policy defined in 211 CMR 71.08(2) or Alternate Innovative Benefit Rider described in 211 CMR 71.09(5), a rate filing shall be determined to have been filed only when it has been submitted in complete form in compliance with 211 CMR 71.12(10), and any accompanying Policy forms have been submitted in complete form in compliance with 211 CMR 71.12(8).

4. For any Medicare Supplement Insurance Policy originally issued to be effective prior to January 1, 1995, a rate filing shall be determined to have been filed only when it has been submitted in complete form in compliance with 211 CMR 71.12(10), and a copy of the Policy form and a statement of the date upon which that form had been approved have been submitted.

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5. Every Issuer shall include in its filing all documents and information as are necessary to support the proposed rates, including where applicable, all documents required by 211 CMR 71.12(8) and (10) and applicable regulations specifying the procedures for rate hearings on such rate filings.

6. Any rate filing for Medicare Supplement Insurance Policies for which the proposed rate shall be filed at least 30 days prior to the proposed effective date of such new rates when the proposed rate:

a. represents an increase in premium of less than 10% more than the premium previously charged by the Issuer for the same Policy or Alternate Innovative Benefit Rider;

b. represents an initial premium request that is less than 10% more than the average premium for the same Policies or Alternate Innovative Benefit Rider charged by Issuers in the same class under 211 CMR 71.12(11); or

c. represents the initial premium request for a Medicare Supplement Policy 1A created to add to an Issuer's existing Medicare Supplement product offerings.

7. Any rate filing for Medicare Supplement Insurance Policies or Alternate Innovative Benefit Riders for which the proposed rate shall be filed at least 90 days prior to the proposed effective date of such new rates when the proposed rate:

a. represents an increase in premium of 10% or more than the premium previously charged by the Issuer for the same Policy or Alternate Innovative Benefit Rider;

b. represents an initial premium request that is 10% or more than the average premium for the same Policies or Alternate Innovative Benefit Rider charged by Issuers in the same class under 211 CMR 71.12(11); or

c. represents an initial premium for a new Medicare Supplement Insurance Policy to conform with the requirements of 211 CMR 71.00, except for a new Medicare Supplement Policy 1A, or except if the filing is for a new Medicare Supplement Insurance Policy only because it contains the filing of a new Alternate Innovative Benefits Rider.

(b) A rate filing must be submitted with each submission of a Medicare Supplement Insurance Policy, rider, or endorsement that affects the premium rate to be charged, and with all changes in premium rates, whether made by endorsement to a Policy, by incorporating into a Policy by reference a table of rates on file with the Commissioner, or unless otherwise provided by the Commissioner. In the case of rate changes, filings shall note the extent of the changes. The Issuer shall also provide a copy of data included in the filing in a form specified by the Commissioner, unless otherwise provided by the Commissioner. Rate filings shall include properly identified rate manual pages, which may be in typed draft or other preliminary form. Policies submitted for rate approval by the Commissioner shall not state or imply that the Massachusetts Division of Insurance does not review the reasonableness of rate increases.

For rate filings subject to prior approval by the Commissioner, an Issuer shall provide all advertisements in, and notifications to, newspapers of the rate hearing required by 211 CMR 71.12(16)(b) for publication in a format and at a time specified by the Commissioner or as provided in applicable regulations specifying the procedures for rate hearings on such rate filings; and shall file evidence thereof with the Commissioner in a format and at a time specified by the Commissioner or as provided in applicable regulations specifying the procedures for rate hearings on such rate filings. The Issuer shall obtain the date of the rate hearing and other information pertinent to the advertisement or notice from the Division.

(c) As soon as practicable, but prior to the effective date of any changes in benefits provided by Medicare and/or by the Medicare Supplement Insurance Policy, every Issuer providing Medicare Supplement Insurance in Massachusetts shall file with the Division, in accordance with applicable filing procedures, appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable Policies. The supporting documents as are necessary to justify the adjustments shall accompany the filing.

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(d) 1. Every Issuer providing a Medicare Supplement Insurance Policy form to a resident of Massachusetts shall make premium adjustments necessary to produce an expected loss ratio under such Policy, and Alternate Innovative Benefit Rider if rated separately from the associated Medicare Supplement Insurance Policy, in accordance with 211 CMR 71.12(1), to conform to minimum loss ratio standards as prescribed by 211 CMR 71.12(11) where applicable and which is expected to result in a loss ratio at least as great as that originally anticipated by the Issuer for the Policies. No premium adjustments which would modify the loss ratio experience under the Policy other than the adjustments described herein shall be made with respect to a Policy at any time other than upon its renewal date, except as otherwise approved by the Division. Premium adjustments may be in the form of refunds or premium credits and shall be made no later than the lesser of 90 days after the date the premium adjustment is determined to be due, or upon renewal if a credit is given, or within the lesser of 90 days after the date the premium adjustment is determined to be due, or 60 days of the renewal date if a refund is provided to the premium payer. No Insured or Member may assign his or her rights to such premium adjustments to another person or entity.

2. If an Issuer fails to make premium adjustments acceptable to the Commissioner, the Commissioner may order premium adjustments, refund or premium credits deemed necessary to achieve the loss ratio required by 211 CMR 71.12(11).

(e) Each rate filing shall be accompanied by an Actuarial Opinion and supporting actuarial memorandum prepared and certified by a qualified actuary, as defined in the instructions for the Life and Accident and Health Annual Statement Blank or Actuarial Standard of Practice No. 16, Actuarial Practice Concerning Health Maintenance Organizations and Other Managed-care Health Plans, as appropriate. Such memorandum shall contain:

1. the formulas or methods used to obtain the gross premiums;

2. a list of all assumptions made in the rate calculations, including identification of mortality, morbidity, and lapse rate tables or experience studies used; as well as a list of all assumptions made in the calculation of any premium surcharge or discount to be charged to Insureds or Members, including the actuarial basis for the selection of the percentage surcharge or discount, and the identification of mortality, morbidity, lapse rate tables or experience used, and the extent to which the experience of Insureds or Members in different products was combined;

3. the pattern of the commission scale applicable to each form and a detailed list of all other anticipated expenses including, but not limited to, per claim expenses, taxes, underwriting and acquisition expenses, including where possible identification of those expenses which are fixed and those which are variable;

4. the expected claim or service costs;

5. the anticipated loss ratios for each of the first five years of coverage, year by year, and for the entire period (the lifetime) for which rates are computed to provide coverage in the Policy form. The anticipated loss ratio during the first five years shall be calculated on an earned incurred rather than a written paid basis. An anticipated loss ratio is defined as the present value at issue of the expected future benefits, excluding dividends, divided by the present value of the expected future annualized premiums from the first day the Policy is sold to the last day that the form is in force. For a given time period, a reasonable interest rate must be used. The aggregate anticipated loss ratios, based on reasonable assumptions as to the distribution of the policy form by age and by various options available shall also be calculated for each of the above time periods.

The calculations of the expected claims costs and the non-aggregated loss ratios shall be clearly described and illustrated.

(f) The following standards for maintaining experience data shall apply to support rate revisions.

1. Maintaining Experience. Premium and loss data shall be recorded for each Policy form on the following basis for each calendar year: premiums written or paid; each reserve component; earned premiums; paid losses; and incurred losses.

2. Combining Experience. Experience under different Policy forms where the premium and coverage are substantially the same must be combined.

3. Fund Accounting. Experience data shall be maintained on the basis of fund accounts that will reflect premiums, investment income, losses, expenses, and provision for reserves.

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(g) Each rate filing shall contain data supporting the expenses of the Issuer in offering a Medicare Supplement Insurance, which are charged in the rates, including information concerning its utilization review programs and other techniques that have had or are expected to have a demonstrated impact on the prevention of reimbursement for services that are not medically necessary; provided however, that Medicare Eligible Expenses which are determined medically necessary by Medicare shall be considered medically necessary by an Issuer.

(h) Each rate filing shall contain a legal opinion that the Issuer is in compliance with the provisions of M.G.L. c. 176K, and 211 CMR 71.00.

(i) Each rate filing for rates that represent an increase of 10% or more than the premium previously charged by the Issuer, or for initial rates that are 10% or more than the premium charged by the average of Issuers in the same class under 211 CMR 71.12(11), or for initial rates for a new Medicare Supplement Insurance Policy issued to conform with 211 CMR 71.08(2), or a new Alternate Innovative Benefit Rider issued under 211 CMR 71.09(5), shall provide information that the Issuer employs a utilization review program and other techniques acceptable to the Commissioner which have had or are expected to have a demonstrated impact on the prevention of reimbursement by the Issuer for services which are not medically necessary; provided however, that Medicare Eligible Expenses which are determined medically necessary by Medicare shall be considered medically necessary by an Issuer.

(j) Any requested rate increases for a Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider in excess of 10% from the premium previously charged by the Issuer shall be communicated by written notice to each Insured so that the Insured receives such notice at least 90 days prior to the effective date of such increase, unless otherwise provided by the Commissioner.

(11) Loss Ratio Standards.

(a) No Medicare Supplement Insurance Policy, Alternate Innovative Benefit Rider if rated separately from the associated Medicare Supplement Insurance Policy in accordance with 211 CMR 71.12(1), shall be issued, renewed, delivered, or issued for delivery unless the Policy or Alternate Innovative Benefit Rider form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to Policyholders the form of aggregate benefits (not including anticipated refunds or credits) provided under the Policy or Alternate Innovative Benefit Rider form:

1. At least 90% of premium for Medicare Supplement Insurance or Alternate Innovative Benefit Riders issued by a nonprofit hospital service corporation or medical service corporation, and all Medicare Select Insurance Policies;

2. At least 65% of premium earned from individual Medicare Supplement Insurance Policies or Alternate Innovative Benefit Riders issued by commercial Issuers including, but not limited to, Policies or Alternate Innovative Benefit Riders issued as a result of solicitations of individuals through the mails or through mass media advertising, including both print and broadcast advertising;

3. At least 75% of the aggregate amount of premiums earned in the case of group Policies or Alternate Innovative Benefit Riders including, but not limited to, Policies or Alternate Innovative Benefit Riders issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising); or

(b) Each type of Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider rated separately in accordance with in 211 CMR 71.12(11)(a) offered by an Issuer shall independently meet the applicable minimum loss ratio standard.

(c) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of 211 CMR 71.12 when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(d) For Medicare Supplement Insurance Policies issued prior to July 30, 1992, expected claims in relation to premiums shall meet:

1. The originally filed anticipated loss ratio when combined with the actual experience since inception;

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2. The appropriate loss ratio requirement from 211 CMR 71.12(11)(a)2. and 3. when combined with actual experience beginning with April 19, 1996 to date; and

3. The appropriate loss ratio requirement from 211 CMR 71.12(11)(a)2. and 3. over the entire future period for which the rates are computed to provide coverage.

4. In demonstrating compliance with the tests in 211 CMR 71.12(11)(d)1. through 3. and for the purposes of attaining credibility, the Issuer shall provide loss ratios based on combined experience under Policy forms which provide substantially the same coverage, provided however, that the experience of individual Policies (including all group Policies subject to an individual loss ratio standard when issued) may not be combined with any group Policies.

(12) Refund or Credit Calculation.

(a) Each Issuer shall collect and file with the Commissioner by May 31st of each year, addressed to the Director of the State Rating Bureau, the data contained in the applicable reporting form prescribed by the Commissioner for each type of Medicare Supplement benefit plan, or in another format prescribed or approved by the Commissioner. Issuers offering an Alternate Innovative Benefit Rider may either collect and file this data separately or consolidated together with the Alternate Innovative Benefit Rider's associated Medicare Supplement Insurance Policy.

(b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type of Medicare Supplement benefit plan or Alternate Innovative Benefit Rider if reported separately. For purposes of the refund or credit calculation, experience on Policies issued within the reporting year shall be excluded.

(c) For the purposes of 211 CMR 71.12(12), for Medicare Supplement Insurance Policies issued prior to July 30, 1992, the Issuer shall make the refund or credit calculation separately for all individual Policies (including all group Policies subject to an individual loss ratio standard when issued) combined and all other group Policies combined for experience after April 19, 1996.

(d) For the purposes of 211 CMR 71.12(12), beginning with reports for calendar year 2001, Non profit Hospital Service Corporations and Medical Service Corporations shall calculate the benchmark loss ratio that is part of the refund calculation using the applicable reporting form specified by the Commissioner (2001 through 2016 and thereafter). All other Issuers shall calculate the benchmark loss ratio that is part of the refund calculation using the applicable reporting forms specified by the Commissioner.

(e) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a *de minimis* level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. Premium adjustments may be in the form of refunds or premium credits and shall be made no later than the lesser of 90 days after the date the premium adjustment is determined to be due, or upon renewal if a credit is given, or within the lesser of 90 days after the date the premium adjustment is determined to be due, or 60 days of the renewal date if a refund is provided to the premium payer. No Insured may assign his or her rights to such premium adjustments to another person or entity.

(f) The refund or credit calculation for each Medicare Supplement Insurance Policy or Alternate Innovative Benefit Rider made pursuant to 211 CMR 71.12(12) shall be based on actual monies received and spent.

(g) A separate accounting of surcharges and discounts shall be filed with the Issuer's annual loss ratio filing.

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(13) Annual Filing of Premium Rates.

(a) An Issuer of Medicare Supplement Insurance Policies issued before or after January 1, 1995 in Massachusetts shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums, by Policy, Alternate Innovative Benefit Rider if rated separately from the associated Medicare Supplement Insurance Policy in accordance with 211 CMR 71.12(1), and duration for approval by the Commissioner in accordance with the filing requirements and procedures prescribed by the Commissioner.

(b) The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. Such demonstration shall exclude active life reserves. An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for Policies, Alternate Innovative Benefit Riders, if rated separately from the associated Medicare Supplement Insurance Policy in accordance with 211 CMR 71.12(1), and in force less than three years.

(c) The filing shall also include data on the number of new Medicare Supplement Insurance Policies, along with separate data on the number of persons newly covered under Alternate Innovative Benefit Riders sold and Policies lapsed in the previous year, and the total number of Policies and persons newly covered under Alternate Innovative Benefit Riders in force as of December 31st of the previous year.

(d) Every Issuer that issues Medicare Supplement Insurance Policies subject to 211 CMR 71.00 shall file annually with the Commissioner an Actuarial Opinion and a legal opinion that certifies that the Issuer's rating methodologies and rates comply with the requirements of M.G.L. c. 176K, and 211 CMR 71.00, and shall maintain at its principal place of business (or, if such principal place of business is not in Massachusetts, at a location within the City of Boston) a complete and detailed description of its rating practices for inspection by the Commissioner or his or her designee.

(14) Standards for Disapproval of Rates. Rate filings may be disapproved by the Commissioner if the benefits provided therein are unreasonable in relation to the rate charged, or if the rates are excessive, inadequate or unfairly discriminatory or do not otherwise comply with the requirements of M.G.L. c. 176K or 211 CMR 71.12. Notwithstanding the foregoing, where applicable, rate filings made under 211 CMR 71.12 are also subject to the provisions of applicable regulations specifying the procedures for rate hearings on such rate filings.

(15) Time Provisions for Medicare Supplement Insurance Rate Filings Required to Be Filed at Least 30 Days before a Proposed Effective Date. For all Medicare Supplement Insurance rate filings required to be filed at least 30 days before a proposed rate effective date pursuant to 211 CMR 71.12(10)(a)6., the following time provisions shall apply:

(a) If not disapproved by the Commissioner, such filing shall be deemed to be approved by the Commissioner 30 days after filing, unless a hearing has commenced within 30 days of the filing and a decision thereon is pending.

(b) Such filing shall not be disapproved by the Commissioner except after a hearing conducted pursuant to M.G.L. c. 30A and applicable regulations specifying the procedures for rate hearings on such rate filings within 30 days after such filing.

(c) Filings resubmitted to conform to the terms of a decision disapproving proposed rates shall be reviewed as part of the same hearing as that in which the Division considered the original filings. All other filings resubmitted thereafter shall be considered to be new filings for the purposes of 211 CMR 71.00.

(d) Any initial premium rate increase and any other increase in premium rates shall continue in effect for not less than 12 months, except that an increase in benefits or a decrease in rates may be permitted at any time.

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(16) Time Provisions for Rate Filings Required to Be Filed at Least 90 Days before a Proposed Rate Effective Date. For all rate filings for Medicare Supplement Insurance required to be filed at least 90 days before a proposed rate effective date pursuant to 211 CMR 71.12(10)(a)7., the following time provisions shall apply:

(a) The Issuer shall file the rate request no later than 90 days prior to the requested effective date.

(b) The Division shall hold a public hearing pursuant to applicable regulations specifying the procedures for rate hearings on such rate filings within 30 days after the filing is made. Notice of the public hearing will be given to, or advertised in, newspapers in Boston, Brockton, Fall River, Pittsfield, Springfield, Worcester, New Bedford, and Lowell as provided in 211 CMR 71.12(11)(c).

(c) The Commissioner shall approve or disapprove the requested rates within 30 days following the conclusion of the public hearing. If the filing is disapproved and a revised filing conforming to the terms of the decision is resubmitted in accordance with applicable regulations specifying the procedures for rate hearings on such rate filings, it shall be approved. Filings resubmitted thereafter shall be considered to be new filings for the purposes of 211 CMR 71.00 and applicable regulations specifying the procedures for rate hearings on such rate filings.

(d) Any increase in premium rates shall continue in effect for not less than 12 months, except that an increase in benefits or a decrease in rates may be permitted at any time.

(e) Notice shall be given to all Insureds of such requested increase in premium rates no less than 90 days before the proposed rate effective date, unless otherwise provided by the Commissioner pursuant to 211 CMR 71.12(10)(k).

(17) Appeals. The submission and approval of a revised rate filing by an Issuer shall not affect the Issuer's right to appeal from those elements of the requested rate filing that were disapproved. Any order, decree, or judgment of the Supreme Judicial Court modifying, amending, annulling, or reversing a decision of the Commissioner disapproving a rate filing, and any further decision of the Commissioner pursuant to such an order, decree, or judgment that affects the overall rate approved shall be effective as of the effective date permitted by the order from which the appeal was taken.

(18) Public Hearings. The Commissioner may conduct a public hearing to gather information concerning a request by an Issuer for an increase in a rate for a Policy, Alternate Innovative Benefit Rider form issued before or after January 1, 1995, and if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of the hearing shall be furnished in accordance with applicable statutory requirements.

71.13: Required Disclosure Provisions

(1) General Rules.

(a) Each Medicare Supplement Insurance Policy covered by 211 CMR 71.00 shall have an outline of coverage. The outline of coverage is prescribed in 211 CMR 71.13(2). This outline of coverage shall not be part of a Policy.

(b) Issuers shall provide an outline of coverage to all Applicants at the time the application is presented to the prospective Applicant and, except for direct response Policies, shall obtain an acknowledgment of receipt of the outline of coverage from the Applicant.

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(c) If the Policy issued is different from the Policy for which an application was made and for which an outline of coverage was previously issued, a revised outline of coverage, properly describing the Policy, shall be attached to the Policy. Such revised outline of coverage shall contain the following statement in no less than 12-point type, immediately above the company name:

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

(d) Except for riders or endorsements by which the Issuer effectuates a request made in writing by the Insured, exercises a specifically reserved right under a Medicare Supplement Insurance Policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare Supplement Insurance Policy after 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 that increases benefits or coverage with a concomitant increase in premium during the Policy term shall 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, the premium charge shall be set forth in the Policy.

(e) Each Policy shall have a notice prominently printed on the first page of the Policy or attached thereto stating in substance that the Policyholder shall have the right to return the Policy within 30 days of its delivery and to have the premium refunded if, after examination of the Policy, the insured person is not satisfied for any reason.

(f) Each Policy shall not provide for the payment of benefits based on standards described as usual and customary", "reasonable and customary", or words of similar import.

(g) Each Policy shall have a specification page and shall provide the following information:

1. The Policy number;
2. The name of the Insured;
3. The effective date, assuming the premium for the Policy has been paid on or before that date; and
4. A listing of the premium or premiums payable and the periods to which they apply.

(h) No misleading Policy names shall be used. A carrier's Policy name shall not misrepresent the extent of benefits actually provided. Carriers shall not use the name "Medicare Supplement", "Medigap" or similar terms except to describe a Policy that complies with 211 CMR 71.00.

(i) All outlines of coverage for Medicare Supplement Insurance must be filed with the Division of Insurance pursuant to 211 CMR 71.12(8)(l).

(2) Disclosure Standards.

(a) Applicants and Insureds are to be clearly informed of the basic nature and provisions of Medicare Supplement Insurance Policies through an outline of coverage for each Policy which summarizes its contents. The outline of coverage shall simply and accurately describe benefits provided by Medicare. The outline of coverage shall also accurately describe the Medicare Supplement Insurance Policy benefits along with benefit limitations.

(b) The outline of coverage consists of three parts as determined by the Commissioner: a cover page (211 CMR 71.13(2)(c)1); text of outline of coverage, including premium information, disclosures and Massachusetts Summary (211 CMR 71.13(2)(c)2.); and charts (211 CMR 71.13(2)(c)3). The premium information, disclosures and Massachusetts Summary portions of the outline of coverage shall be in the language and format prescribed below in no less than 12-point type. Consistent with federal law, as of January 1, 2006, all Medicare Supplement Core and Medicare Supplement 1 plans prescribed pursuant to 211 CMR 71.00 shall be shown on the cover page, and the plan(s) that are offered by the insurer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective Applicant. All possible premiums for the prospective Applicant shall be illustrated. The outline of coverage, including the precise format and language to be used, is set out below in 211 CMR 71.13(2)(c).

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(c) Outline of Coverage. The following items shall be included in the outline of coverage in the order prescribed below:

1. Cover Page. [The cover page shall be in the precise format and language as determined by the Commissioner]

2. Text of Outline of Coverage:

MASSACHUSETTS MEDICARE SUPPLEMENT INSURANCE OUTLINE OF COVERAGE

(ISSUER'S NAME)

(Issuer's Policy Name and Number)

Policy Category: MEDICARE SUPPLEMENT INSURANCE

"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."

PREMIUM INFORMATION

We [insert Issuer' s name] can only raise your premium if we raise the premium for all Policies like yours in Massachusetts, and if approved by the Commissioner of Insurance. If you choose to pay your premium on a quarterly, semiannual, or annual basis, upon your death, we will refund the unearned portion of the premium paid. If you choose to pay your premium on a quarterly, semiannual, or annual basis and you cancel your Policy, we [insert either will or will not] refund the unearned portion of the premium paid. In the case of death [insert if the unearned portion of the premium will be refunded if coverage is canceled: or your cancellation of the Policy] the unearned portion of the premium will be refunded [insert on a *pro rata* basis or insert methodology which has been submitted to and approved by the Commissioner].

DISCLOSURES

Use this outline to compare benefits and premiums among Policies.

READ YOUR POLICY VERY CAREFULLY

This is only an outline describing your Policy's most important features. The Policy is your insurance contract. You must read the Policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY

If you find that you are not satisfied with your Policy, you may return it to [insert Issuer's address]. If you send the Policy back to us within 30 days after you receive it, we will treat the Policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT

If you are replacing another health insurance Policy, do NOT cancel it until you have actually received your new Policy and are sure you want to keep it. If you cancel your present Policy and then decide that you do not want to keep your new Policy, it may not be possible to get back the coverage of the present Policy.

If you newly enroll in a Medicare Supplement 1 plan and you became Medicare Eligible before January 1, 2020, you will not be able to switch into the same company's Medicare Supplement 1A plan until you have been covered under the Medicare Supplement 1 plan for a period of at least 12 months.

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NOTICE

This Policy may not fully cover all of your medical costs.

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

[for direct response:]
[insert company' s name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult *Medicare & You* for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT

When you fill out the application for the new Policy, be sure to answer truthfully and completely all questions. The company may cancel your Policy and refuse to pay any claims if you leave out or falsify important information.

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[The term "Certificate" should be substituted for the word "Policy" throughout the outline of coverage where appropriate.]

[The Medicare Supplement outline of coverage shall include the following statement, entitled Massachusetts Summary. The provision concerning "Complaints" must be set forth in a separate paragraph.]

MASSACHUSETTS SUMMARY

The Commissioner of Insurance has set standards for the sale of Medicare Supplement Insurance Policies. Such Policies help you pay hospital and doctor bills, and some other bills, that are not covered in full by Medicare. Please note that the benefits provided by Medicare and this Medicare Supplement Insurance Policy may not cover all of the costs associated with your treatment. It is important that you become familiar with the benefits provided by Medicare and your Medicare Supplement Insurance Policy. This Policy summary outlines the different coverages you have if, in addition to this Policy, you are also covered by Part A (hospital bills, mainly) and Part B (doctors' bills, mainly) of Medicare.

Under M.G.L. c. 112, § 2, no physician who agrees to treat a Medicare beneficiary may charge to or collect from that beneficiary any amount in excess of the reasonable charge for that service as determined by the United States Secretary of Health and Human Services. This prohibition is commonly referred to as the ban on balance billing. A physician is allowed to charge you or collect from your insurer a copayment or coinsurance for Medicare-covered services. However, if your physician charges you or attempts to collect from you an amount which together with your copayment or coinsurance is greater than the Medicare-approved amount, please contact the Board of Registration in Medicine at [insert the telephone number for the Massachusetts Board of Registration in Medicine regarding licensing].

We cannot explain everything here. Massachusetts law requires that personal insurance Policies be written in easy-to-read language. So, if you have questions about your coverage not answered here, read your Policy. If you still have questions, ask your agent or company. You may also wish to get a copy of *Medicare & You*, a small book put out by Medicare that describes Medicare benefits.

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THE BENEFITS TO PREMIUM RATIO FOR EACH POLICY SOLD is ___%.

[Insert here the lifetime aggregate anticipated loss ratio from 211 CMR 71.12(10)(a). If the ratio is different for different Policy forms, then separately specify the ratio for each Policy form. Heading should be in Boldface type.]

This means that during the anticipated life of your Policy and others just like it, the company expects to pay out $_____ in claims made by you and all other Policyholders for every $100 it collects in premiums. The minimum ratio allowed for Policies of this type is ___%. A higher ratio is to your advantage as long as it allows the company a reasonable return so that the product remains available.
[If the ratio is different for different Policy forms, then provide a separate paragraph for each Policy form.]

COMPLAINTS

If you have a complaint, call us at [area code and telephone number] or your agent. If you are not satisfied, you may write or call the Massachusetts Division of Insurance, [insert the address of the Massachusetts Division of Insurance] or call [insert the telephone number of the consumer helpline at the Massachusetts Division of Insurance].

3. Charts
[Insert here a comparison of the benefits available under Medicare A and B, and the three Medicare Supplement Insurance Policies in the form prescribed by the Commissioner.]

(d) Notice Requirements.

1. Notice of Changes. As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every Issuer providing Medicare Supplement Insurance or benefits to a resident of Massachusetts shall notify its Insureds of modifications it has made to its Medicare Supplement Insurance Policies as a result of any changes to the Medicare program or to 211 CMR 71.00. The notice shall be in a format prescribed by the Commissioner. The notice shall:

a. Include a separate description of revisions to the Medicare program, if any, and a description of each modification made to the coverage provided under the Medicare Supplement Insurance Policy, as well as how those changes affect the premium, if at all. If there is no change in the premium, the notice must explain why not.

b. Inform each Insured as to when a premium adjustment, if any, will be made due to changes in Medicare benefits or the Medicare Supplement Insurance Policy.

c. Be in outline form and in clear and simple terms so as to be easy to read.

d. Be clearly labeled and shall not contain or be accompanied in the same mailing by any solicitation or other notices.

2. Revised Policy Form. No later than 90 days after the date of approval of Medicare Supplement Insurance rates, every Issuer providing Medicare Supplement Insurance, upon satisfying the filing and approval requirements of 211 CMR 71.00, *et seq*. and applicable regulations specifying the procedures for rate hearings on such rate filings, shall provide each Insured with any rider, endorsement or revised Policy form necessary to eliminate any benefit duplication under the Policy with benefits provided by Medicare. Such revision shall not be made by rider or endorsement, unless approved by the Commissioner.

3. Revised Policy Outline of Coverage. No later than 90 days after the date of approval of Medicare Supplement Insurance rates and in addition to the notice of changes prescribed by 211 CMR 71.13(2)(d)1., every Insured covered by a Medicare Supplement Insurance Policy shall be provided with a revised outline of coverage which reflects any changes made to the Medicare program or to their Medicare Supplement Insurance Policy. Such outline of coverage shall comply with the provisions of 211 CMR 71.13(2)(a), (b) and (c).

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4. Guide to Health Insurance for People with Medicare.
   a. Issuers of accident and sickness Policies which provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person(s) eligible for Medicare shall provide to those Applicants a *Guide to Health Insurance for People with Medicare* in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12-point type. The *Guide* shall also include an attachment concerning the Massachusetts Medicare Supplement Insurance Program in a form prescribed by the Commissioner in no smaller than 12-point type. Delivery of the *Guide* shall be made whether or not such Policies are advertised, solicited or issued as Medicare Supplement Insurance Policies as defined in 211 CMR 71.00. Except in the case of direct response carriers, delivery of the *Guide* shall be made to the Applicant at the time of application and acknowledgment of receipt of the *Guide* shall be obtained by the insurer. Direct response carriers shall deliver the *Guide* to the Applicant upon request, but not later than at the time the Policy is delivered.
   b. For the purposes of 211 CMR 71.13(2)(d)4.a., "form" means the language, format, type size, type proportional spacing, bold character and line spacing.
5. Required Notice for Non-medicare Supplement Policies.
   a. Any accident and sickness insurance or long-term care insurance policy, other than a Medicare Supplement Insurance Policy, a policy issued pursuant to a contract under the Social Security Act § 1876 (42 U.S.C. § 1395, *et seq*.); disability income policy or other policy identified in 211 CMR 71.02(2), issued for delivery in Massachusetts to persons eligible for Medicare shall notify Insureds under the policy that the policy is not a Medicare Supplement Insurance Policy. The notice shall either be printed or attached to the first page of the outline of coverage delivered to Insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy delivered to Insureds. The notice shall be in no less than 12-point type and shall contain the following language:
   "THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the *Guide to Health Insurance for People with Medicare* available from the company. "
   b. Applications provided to persons eligible for Medicare for the health insurance or long-term care insurance policies described in 211 CMR 71.13(2)(d)5.a. shall disclose, using the applicable statement determined by the Commissioner, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy.

(3) MMA Notice Requirement. Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

71.14: Requirements for Application or Replacement

(1) Application forms shall include the following questions and statements in precisely the following form designed to elicit information as to whether, as of the date of the application, the Applicant has another Medicare Supplement, Medicare Advantage, Medicaid coverage, or other health insurance policy in force or whether a Medicare Supplement Insurance Policy is intended to replace any other accident and sickness policy presently in force. A supplementary application or other form to be signed by the Applicant and agent containing such questions and statements may be used.

[Statements]

(a) You do not need more than one Medicare Supplement Insurance Policy.
(b) If you newly enroll in a Medicare Supplement 1 plan, you are not permitted to switch within the same company into a Medicare Supplement 1A plan until you have been covered by the company's Medicare Supplement 1 plan for at least 12 months.
(c) If you purchase this Policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

71.14: continued

(d) You may be eligible for Medicaid benefits and may not need a Medicare Supplement Insurance Policy.

(e) The benefits and premiums under your Medicare Supplement Insurance Policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your Policy will be reinstituted if requested within 90 days of losing Medicaid eligibility.

If the Medicare Supplement Insurance Policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your Policy was suspended, the reinstituted Policy will not have outpatient prescription drug coverage, as you will be enrolled in the most comparable plan without outpatient prescription drug coverage.

[Issuers that permit a period of suspension for longer than 24 months should delete "for 24 months" and insert the appropriate limitation.]

(f) If you are eligible for, and have enrolled in a Medicare Supplement Insurance Policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare Supplement Insurance Policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare Supplement Insurance Policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare Supplement Insurance Policy (or, if that is no longer available, a substantially equivalent Policy) will be reinstituted if requested within 90 days of losing your employer or union-based group health plan.

If the Medicare Supplement Insurance Policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your Policy was suspended, the reinstituted Policy will not have outpatient prescription drug coverage, as you will be enrolled in the most comparable plan without outpatient prescription drug coverage.

(g) Counseling services are available in Massachusetts to provide advice concerning your purchase of Medicare Supplement Insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-income Medicare Beneficiary (SLMB). You may call the Massachusetts Executive Office of Elder Affairs insurance counseling program at [insert the toll-free number of the Massachusetts Executive Office of Elder Affairs] or write to that office at the following address for more information: [insert the address of the Massachusetts Executive Office of Elder Affairs].

[Questions]

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare Supplement Insurance Policy, or that you had certain rights to buy such a Policy, you may be guaranteed acceptance in one or more of our Medicare Supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.

[Please mark Yes or No below with an "X"]

To the best of your knowledge,

(1) (a) Did you turn 65 years of age in the last six months?

Yes____ No____

(b) Did you enroll in Medicare Part B in the last six months?

Yes____ No____

(c) If yes, what is the effective date? _____

71.14: continued

(2) Are you covered for medical assistance through the state Medicaid program?

[NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost", please answer NO to this question.]

Yes____ No____

If yes,

(a) Will Medicaid pay your premiums for this Medicare Supplement Insurance Policy?

Yes____ No____

(b) Do you receive any benefits from Medicaid other than payments toward your Medicare Part B premium?

Yes____ No____

(3) (a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START __/__/__ END __/__/__

(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare Supplement Insurance Policy?

Yes____ No____

(c) Was this your first time in this type of Medicare plan?

Yes____ No____

(d) Did you drop a Medicare Supplement Insurance Policy to enroll in the Medicare plan?

Yes____ No____

(4) (a) Do you have another Medicare Supplement Insurance Policy in force?

Yes____ No____

(b) If so, with what company, and what plan do you have [optional for Direct Mailers]?

_____

(c) If so, do you intend to replace your current Medicare Supplement Insurance Policy with this policy?

Yes____ No____

71.14: continued

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan.)

Yes____ No____

(a) If so, with what company and what kind of policy?

_____

_____

_____

_____

(b) What are your dates of coverage under the other policy?

START __/__/__ END __/__/__

(If you are still covered under the other policy, leave "END" blank.)

(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 years which are no longer in force.

(3) In the case of a direct response Issuer, a copy of the application or supplemental form, signed by the Applicant, and acknowledged by the Issuer, shall be returned to the Applicant by the Issuer upon delivery of the Policy.

(4) Upon determining that a sale will involve replacement of Medicare Supplement coverage, any Issuer, other than a direct response Issuer, or its agent, shall furnish the Applicant, prior to issuance or delivery of the Medicare Supplement Insurance Policy, a notice regarding replacement of Medicare Supplement coverage. One copy of the notice signed 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 a copy shall be retained by the Issuer. A direct response Issuer shall deliver to the Applicant at the time of the issuance of the Policy the notice regarding replacement of Medicare Supplement coverage.

(5) The notice required by 211 CMR 71.14(4) for an Issuer shall be provided in precisely the following form in no less than 12-point type:

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 terminate existing Medicare Supplement Insurance and replace it with a Policy to be issued by [Company Name] Insurance Company. Your new Policy will provide 30 days within which you may decide without cost whether you desire to keep the Policy. You have 30 days to review your policy and decide whether to keep it, EXCEPT that if you are newly enrolling in a Medicare Supplement 1 plan, then you are not permitted to switch within the same company into a Medicare Supplement 1A plan until you have been covered by the company's Medicare Supplement 1 plan for a period of at least 12 months. You should review your new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare Supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this Policy.

71.14: continued

STATEMENT TO APPLICANT BY ISSUER, INSURANCE PRODUCER, OR OTHER REPRESENTATIVE:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare Supplement Insurance Policy will not duplicate your existing Medicare Supplement coverage because you intend to terminate your existing Medicare supplement coverage. The replacement Policy is being purchased for the following reason(s) (check one):

_____ Additional benefits
_____ No change in benefits, but lower premiums.
_____ Fewer benefits and lower premiums.
_____ Other. (please specify)
_____
_____

(1) State law provides that your replacement Policy may not contain any preexisting conditions, waiting periods, elimination periods or probationary periods.

(2) If 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. Failure to include all material 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, review it carefully to be certain that all information has been properly recorded.

Do not cancel your present Policy until you have received your new Policy and are sure that you want to keep it. If you cancel your present Policy and then decide that you do not want to keep your new Policy, it may not be possible to get back the coverage of the present Policy.

_____
(Signature of Insurance Producer or Other Representative)*

[Typed Name and Address of Issuer or Insurance Producer]

_____
(Applicant's signature)

_____
(Date)

[*Signature not required for direct response sales.]

71.15: Appropriateness of Recommended Purchase and Excessive Insurance

(1) In recommending the purchase or replacement of any Medicare Supplement Insurance Policy a producer and/or Issuer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of Medicare Supplement coverage that will provide an individual more than one Medicare Supplement Insurance Policy is prohibited.

(3) An Issuer shall not issue a Medicare Supplement Insurance Policy to an individual enrolled in Medicare Part C, unless the effective date of coverage is after the termination date of the individual's Part C coverage.

71.16: Standards for Marketing

(1) Every Issuer or other entity marketing Medicare Supplement Insurance in Massachusetts directly or through its producers, shall establish marketing procedures:

(a) to ensure that any comparison of Policies by its agents or other producers will be fair and accurate.

(b) to ensure excessive insurance is not sold or issued.

71.16: continued

(c) to ensure that Insureds are informed that the Policy they are purchasing does not cover all of the costs associated with medical care incurred by the Insureds by displaying the following prominently by type, stamp or other appropriate means on the first page of the Policy:
"Notice to Buyer: This Policy may not cover all of your medical expenses."
(d) to 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.
(e) to ensure that Applicants and Insureds are clearly informed of the basic nature and provisions of their Medicare Supplement Insurance Policy.
(f) to ensure that Insureds are clearly informed as to the benefits provided by Medicare.

(2) Every Issuer or entity marketing Medicare Supplement Insurance in Massachusetts, directly or through its producers, is prohibited from "cold lead advertising", " twisting" or "high pressure tactics", as defined in 211 CMR 71.03.

(3) Every Issuer or other entity marketing Medicare Supplement Insurance in Massachusetts, directly or through its producers, shall establish auditable procedures for verifying compliance with 211 CMR 71.16.

(4) The terms "Medicare Supplement", "Medigap" and words of similar import shall not be used to describe a Medicare Supplement Insurance Policy, unless such Policy is issued in compliance with 211 CMR 71.00.

71.17: Filing Requirements for Advertising

As soon as possible, but no later than 15 days before an Advertisement is used, every Issuer providing Medicare Supplement Insurance in Massachusetts shall file with the Commissioner for review, any Advertisement, whether through written, radio or television medium, intended for use in Massachusetts. Such Advertisements shall comply with all applicable laws.

71.18: Permitted Producer Compensation Arrangements

(1) An Issuer or other entity may provide commissions or other compensation to a producer for the sale of a Medicare Supplement Insurance Policy only if the first year commission or other first year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the Policy in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five renewal years.

(3) No entity shall provide compensation to its producers and no producer shall receive compensation greater than the renewal compensation payable by the replacing Issuer on renewal Policies if an existing Policy is replaced.

71.19: Reporting of Multiple Policies

(1) On or before March 1st of each year, an Issuer shall report the following information for every individual resident of Massachusetts for which the Issuer has in force more than one Medicare Supplement Insurance Policy:
(a) Policy and Certificate number; and
(b) date of issuance.

(2) The items set forth above must be grouped by individual Policyholder.

(3) The information required by 211 CMR 71.19 shall be reported on a form prescribed by the Commissioner and addressed to the Director of the State Rating Bureau at the Division of Insurance.

71.20: Permitted Surcharges or Discounts for Medicare Supplement Insurance

(1) To the extent permitted by federal law and subject to the provisions of 211 CMR 71.10(5), an Issuer may apply a surcharge to the premium for a Medicare Supplement Insurance Policy for an Eligible Person who is a Late Enrollee or who Upgrades Coverage. For Late Enrollees, a surcharge may be applied, unless the Reasonably Actuarially Equivalent prior coverage was continuous from either the Late Enrollee's initial eligibility or three years prior to the effective date of the new coverage, whichever is later. Any surcharge may not exceed 15% annually and may not be charged for more than three years from the date it is imposed by the carrier. Each annual surcharge shall be applied to the premium for that year. No surcharge may be imposed by an Issuer, unless that Issuer also applies discounts for the Medicare Supplement Insurance Policy in accordance with 211 CMR 71.20(2).

(2) To the extent permitted by federal law, as of January 1, 1995, an Issuer may discount the premium for such Medicare Supplement Insurance Policy for a person who has enrolled during the six-month period beginning at the time the person become initially eligible for coverage after 65 years of age. Any discount may not exceed 15% annually and may not be applied for more than three years from the date the Eligible Person first receives coverage. Each annual discount shall be applied against the premium for that year.

(3) To the extent permitted by federal law, an Issuer desires to apply a surcharge or discount to the premium for a Medicare Supplement Insurance Policy shall support its proposed surcharge or discount in its Rate Filing as provided in 211 CMR 71.12(10)(f).

(4) To the extent permitted by federal law, an Issuer that applies a surcharge or discount to the premium for a Medicare Supplement Insurance Policy shall comply with the refund and credit calculation requirements of 211 CMR 71.12(12).

71.21: Medicare Select

(1) 211 CMR 71.21 shall apply to Medicare Select Policies, as defined in 211 CMR 71.21.

(2) No policy may be advertised as a Medicare Select Policy, unless it meets the requirements of 211 CMR 71.21.

(3) No Issuer may offer a Medicare Select Policy, unless that Issuer also offers a Medicare Supplement Core plan that is not a network plan.

(4) For the purposes of 211 CMR 71.21:

(a) Complaint means any dissatisfaction expressed by an Individual concerning a Medicare Select Issuer or its Network Providers.

(b) Grievance means dissatisfaction expressed in writing by an Individual Insured under a Medicare Select Policy with the administration, claims practices, or provision of services concerning a Medicare Select Issuer or its Network Providers.

(c) Medicare Select Issuer means an Issuer offering, or seeking to offer, a Medicare Select Policy.

(d) Medicare Select Policy means a Medicare Supplement Insurance Policy that contains Restricted Network Provisions.

(e) Network Provider means a provider of health care or a group of providers of health care, which has entered into a written agreement with the Issuer to provide benefits insured under a Medicare Select Policy.

(f) Restricted Network Provision means any provision which conditions the payment or benefits, in whole or in part, on the use of Network Providers.

(g) Service Area means the geographic area approved by the Commissioner within which an Issuer is authorized to offer a Medicare Select Policy.

(5) The Commissioner may authorize an Issuer to offer a Medicare Select Policy, pursuant to 211 CMR 71.21 and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the Commissioner finds that the Issuer has satisfied all of the requirements of 211 CMR 71.00.

(6) A Medicare Select Issuer shall not issue a Medicare Select Policy in Massachusetts until its plan of operation has been approved by the Commissioner.

71.21: continued

(7) A Medicare Select Issuer shall be accredited according to the provisions of M.G.L. c. 176O, and 211 CMR 52.00: *Managed Care Consumer Protections and Accreditation of Carriers* and such Medicare Select Issuer shall file a proposed plan of operation and copies of all standard provider contracts according to the provisions of 211 CMR 52.12: *Standards for Provider Contracts*. The plan of operation shall contain at least information that follows, and the carrier may satisfy any or all of the following requirements by documenting that the information was filed previously as part of the accreditation process under 211 CMR 52.06: *Application for Accreditation* and by providing the location of the information within that accreditation application:

(a) Evidence, according to the provisions of 211 CMR 52.13: *Evidences of Coverage*, that all covered services that are subject to Restricted Network Provisions are available and accessible through Network Providers, including a demonstration that:

1. The number of Network Providers in the Service Area is sufficient, with respect to current and expected Policyholders, either:

a. To deliver adequately all services that are subject to Restricted Network Provisions; or

b. To make appropriate referrals.

2. The Issuer has written agreements with Network Providers describing specific responsibilities.

3. Emergency care is available 24 hours per day and seven days per week.

4. In the case of covered services that are subject to a Restricted Network Provision and are provided on a prepaid basis, the Issuer has written agreements with Network Providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any Individual Insured under a Medicare Select Policy. 211 CMR 71.21(7)(a)4. shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select Policy.

(b) A statement or map providing a clear description of the Service Area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention and removal of Network Providers; and

3. The procedures for evaluating quality of care provided by Network Providers, and the process to initiate corrective action when warranted.

(e) A list and description, by specialty, of the Network Providers.

(f) Copies of written information proposed to be used by the Issuer to comply with 211 CMR 71.21(10).

(g) Any other information requested by the Commissioner.

(8) A Medicare Select Issuer shall file any proposed changes to the plan of operation according to the process for filing material changes to the accreditation application under 211 CMR 52.06: *Application for Accreditation*.

(9) A Medicare Select Policy shall have a network, and the in network benefits provided under such Medicare Select Policy shall be identical to either the Medicare Supplement Core benefits, or the Medicare Supplement 1 benefits, or the Medicare Supplement 1A benefits. A Medicare Select Policy may offer a tiered network, but the benefits offered in each in network tier shall be identical to either the Medicare Supplement Core benefits, the Medicare Supplement 1 benefits, or the Medicare Supplement 1A benefits.

(10) A Medicare Select Policy shall not restrict payment for covered services provided by non-network providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(b) It is not reasonable to obtain services through a Network Provider.

(11) A Medicare Select Policy shall provide payment for full coverage under the Policy for covered services that are not available through Network Providers.

71.21: continued

(12) A Medicare Select Issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select Policy to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy with:

1. Other Medicare Supplement Insurance Policies offered by the Issuer; and
2. Other Medicare Select Policies or Certificates.

(b) A description (including address, phone number and hours of operation) of the Network Providers, including primary care providers, specialty providers, hospitals and other providers.

(c) A description of the Restricted Network Provisions, including payments for coinsurance and deductibles when providers other than Network Providers are utilized.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to Restricted Network Providers and to other providers.

(f) A description of the Policyholder's rights to purchase any other Medicare Supplement Insurance Policy otherwise offered by the Issuer.

(g) A description of the Medicare Select Issuer's quality assurance program and grievance procedure.

(13) Prior to the sale of a Medicare Select Policy, A Medicare Select Issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to 211 CMR 71.21(10) and that the applicant understands the restrictions of the Medicare Select Policy.

(a) A Medicare Select Issuer shall have and use procedures for hearing complaints and resolving written grievances from the Insureds, and such procedures shall be in accordance with M.G.L. c. 176O, M.G.L. c. 6D, and any other applicable provision of law.

(b) The grievance procedure shall be described in the Policy and in the outline of coverage.

(c) At the time the Policy is issued, the Issuer shall provide detailed information to the Insured describing the way that a grievance may be registered with the Issuer.

(d) Grievances shall be handled in accordance with M.G.L. c. 176O, M.G.L. c. 6D, and any other applicable provision of law.

(e) If a grievance is found to be valid, corrective action will be taken in accordance with M.G.L. c. 176O, M.G.L. c. 6D, and any other applicable provision of law.

(f) All concerned parties shall be notified about the results of a grievance in accordance with M.G.L. c. 176O, M.G.L. c. 6D, and any other applicable provision of law.

(g) The Issuer shall report no later than each March 31st to the Commissioner regarding its grievance procedure. The report shall be in accordance with M.G.L. c. 176O, M.G.L. c. 6D, and any other applicable provision of law in a format as prescribed at the discretion of the Commissioner.

(14) At the time of the initial purchase, a Medicare Select Issuer shall make available to each applicant for a Medicare Select Policy the opportunity to purchase any Medicare Supplement Policy offered by the Issuer.

(15) At the request of an individual Insured under a Medicare Select Policy, a Medicare Select Issuer shall make available to the individual Insured the opportunity to purchase a Medicare Supplement Policy offered by the Issuer which has comparable or lesser benefits and which does not contain a Restricted Network Provision.

For the purposes of 211 CMR 71.21(16), a Medicare Supplement Policy will be considered to have comparable or lesser benefits, unless it contains one or more significant benefits not included in the Medicare Select Policy being replaced. For the purposes of 211 CMR 71.21(16), a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges,

(16) Medicare Select policies shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select Policies issued pursuant to 211 CMR 71.21(16) should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

71.21: continued

(a) Each Medicare Select Issuer shall make available to each individual Insured under a Medicare Select Policy the opportunity to purchase any Medicare Select Policy offered by the Issuer for which the individual Insured is eligible which has comparable or lesser benefits and which does not contain a restricted Network Provision. The Issuer shall make the policies and available without evidence of insurability.

(b) For the purposes of 211 CMR 71.21(17), a Medicare Select Policy will be considered to have comparable or lesser benefits, unless it contains one or more significant benefits not included in the Medicare Select Policy being replaced. For the purposes of 211 CMR 71.21(17)(b), a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

(17) A Medicare Select Issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

71.22: Withdrawal from the Market for Medicare Supplement Insurance

(1) An Issuer that participates in the market for Medicare Supplement Insurance on or after January 1, 1995 may not withdraw from the market until all the Insureds of the Issuer have had an opportunity to obtain coverage as of the next June 1st under a Medicare Supplement Insurance Policy offered by another Issuer during the annual open enrollment period outlined in 211 CMR 71.10(5), or the open enrollment periods outlined in 211 CMR 71.10(3) and (4) if such open enrollment periods allow all of the Issuer's Insureds to obtain coverage prior to the next June 1st.

(2) An Issuer that withdraws from the market for Medicare Supplement Insurance pursuant to 211 CMR 71.22(1), shall provide to the Commissioner of Insurance a notice of withdrawal and withdrawal plan at least 60 days prior to February 1st of any calendar year which is the start of the annual open enrollment period pursuant to 211 CMR 71.10(5). Such withdrawal plan shall describe in detail how the Issuer intends to comply with 211 CMR 71.22(1) and shall be subject to the Commissioner's approval. In addition, the Issuer shall be required to provide written notice to all of its Insureds of the approved withdrawal plan.

(3) An Issuer that withdraws from the market for Medicare Supplement Insurance on or after January 1, 1995 may not Participate in the Market for Medicare Supplement Insurance in Massachusetts for five years from the date of withdrawal, unless the Commissioner finds that such reentry shall be permitted earlier than five years due to a compelling interest.

(4) For the purposes of 211 CMR 71.22(1) through (3), "Withdraw or Withdraws from the Market" shall mean that the Issuer has discontinued the availability of all of its Policy forms pursuant to 211 CMR 71.12(6).

(5) For the purposes of 211 CMR 71.22(2) and (3), the "Date of Withdrawal" shall mean the date which the Issuer discontinued the availability of all of its Policy forms pursuant to 211 CMR 71.22(1).

71.23: Annual Public Hearing to Monitor Market Condition

(1) The Commissioner shall annually conduct a public hearing to monitor the overall condition of the Massachusetts market so as to improve access by individuals to coverage under 211 CMR 71.00, to encourage aggregation of risk pools through product selection and to promote long-term access by individuals to coverage through continued stability and financial viability of all carriers in the market. Such hearing shall be conducted during the month of June each year, unless otherwise determined by the Commissioner. Interested parties are encouraged to suggest issues to be addressed at the hearing by filing a request with the Commissioner no later than April 15th of each year.

(2) The Commissioner shall also file with the committee on insurance any recommendations for legislation to improve the accessibility and affordability of coverage in the market.

71.24: Severability

If any section or portion of a section of 211 CMR 71.00, or the applicability thereof to any person or circumstance is held invalid by any court of competent jurisdiction, the remainder of 211 CMR 71.00, or the applicability thereof to other persons or circumstances, shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 71.00: M.G.L. c. 175, §§ 2B, 108, 110E and 205; M.G.L. chs. 175J, 176, 176A, 176B, 176D, 176G and 176K.