

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE**

**AMENDING AND CREATING A RULE**

To amend Ins 3.39(34)(b)1. and 2., (b)3.b. and (b)6. and to create Ins 3.39(34)(b)1m., Wis. Adm. Code, relating to guarantee issue eligibility for Medicare Supplement insurance.

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**ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE**

Statutory authority: ss. 600.01(2), 601.41(3), 601.42, 628.34(12), 628.38 Stats.

Statutes interpreted: ss. 600.01, 628.34 (12), 628.38 Stats.

These changes will clarify the persons eligible who have the right to have Medicare Supplement policies guaranteed issued. The changes track the recent revisions in the NAIC (National Association of Insurance Commissioners) model Medicare Supplement regulations.

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**SECTION 1. Section Ins 3.39(34)(b)1. is amended to read:**

Ins 3.39(34)(b)1. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under ~~medicare;~~ medicare and the plan terminates, or the plan ceases to provide some or all such supplemental health benefits to the individual;

**SECTION 2. Section Ins 3.39(34)(b)1m. is created to read:**

Ins 3.39(34)(b)1m. The individual is enrolled under an employee welfare benefit plan that is primary to medicare and the plan terminates or the plan ceases to provide some or all health benefits to the individual because the individual leaves the plan.

**SECTION 3. Section Ins 3.39(34)2., (b)3.b. and (b)6. are amended to read:**

Ins 3.39(34)(b)2. The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of medicare, and ~~there are circumstances permitting discontinuance of the individual's election of the plan under the first sentence of section 1851(e)(4) of the federal Social Security Act, which consists of the following: any of the following circumstances apply:~~

~~“Effective as of January 1, 2002, an individual may discontinue an election of a Medicare+Choice plan offered by a Medicare+Choice organization other than during an annual, coordinated election period [under Medicare] and make a new election under this section if:~~

~~1. a.~~ The organization's or plan's certification ~~{under this part}~~ has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides; resides.

~~2. b.~~ 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 secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area; area.

~~3. c.~~ The individual demonstrates, in accordance with guidelines established by the Secretary ~~that:~~ secretary that, at least one of the following has occurred:

~~a. 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; or~~ standards.

~~b. 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~~ individual.

~~4. d.~~ The individual meets such other exceptional conditions as the Secretary secretary may provide."

(b)3.b. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under ~~the first sentence of Section 1851(e)(4) of the federal Social Security Act as delineated above in subd. par.~~ par.

(b)2.

(b)6. The individual, upon first becoming eligible enrolled in medicare part B for benefits ~~under part A of medicare~~, enrolls in a Medicare+Choice plan under part C of medicare, and disenrolls from the plan by not later than 12 months after the effective date of enrollment.

**SECTION 4. These changes will take effect on the first day of the first month after publication, as provided in s. 227.22(2)(intro.), Stats.**

Dated at Madison, Wisconsin, this 27th day of May, 1999.

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Connie L. O'Connell  
Commissioner of Insurance