

17B:26A-9

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 17B:26A-9

LAWS OF: 1992 CHAPTER: 163

BILL NO: A1740

SPONSOR(S) Milkulak and others

DATE INTRODUCED: August 3, 1992

COMMITTEE: ASSEMBLY: Insurance
SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: October 8, 1992
SENATE: October 29, 1992

DATE OF APPROVAL: December 2, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: No

FISCAL NOTE: Yes

VETO MESSAGE:

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

P.L.1992, CHAPTER 183, approved December 2, 1992
1992 Assembly No. 1740

1 AN ACT concerning medicare supplement health insurance
2 offered by commercial insurers and amending and
3 supplementing P.L.1982, c.94.
4

5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. (New section) Except as otherwise specifically provided:

8 a. The provisions of P.L.1982, c.94 (C.17B:26A-1 et seq.) shall
9 apply to all medicare supplement policies delivered or issued for
10 delivery in this State and all certificates issued under group
11 medicare supplement policies, which certificates are delivered or
12 issued for delivery in this State.

13 b. The provisions of P.L.1982, c.94 (C.17B:26A-1 et seq.) shall
14 not apply to health insurance policies, including group conversion
15 policies, provided to medicare eligible persons that are not
16 advertised, marketed, designed primarily as or otherwise held out
17 to be medicare supplement policies.

18 2. Section 1 of P.L.1982, c.94 (C.17B:26A-1) is amended to
19 read as follows:

20 1. For the purposes of this act:

21 a. "Applicant" means:

22 (1) In the case of an individual medicare supplement policy,
23 the person who seeks to contract for insurance benefits, and

24 (2) In the case of a group medicare supplement policy, the
25 proposed certificate holder.

26 b. "Certificate" means any certificate issued under a group
27 medicare supplement policy, which [policy] certificate has been
28 delivered or issued for delivery in this State.

29 c. "Commissioner" means the Commissioner of Insurance.

30 d. "Medicare" means the program established by the "Health
31 Insurance for the Aged Act," Title XVIII of the [Social Security
32 Amendments of 1965,] "Social Security Act," Pub.L. [89-9]
33 89-97, as then constituted or later amended (42 U.S.C. §1395 et
34 seq.).

35 e. "Medicare supplement policy" means a group or individual
36 [accident and sickness] insurance policy or certificate which is
37 advertised, marketed [or], designed primarily as, or is otherwise
38 held out to be, a supplement to reimbursements under medicare
39 for the hospital, medical or surgical expenses of persons eligible
40 for medicare [by reason of age] , other than a policy issued
41 pursuant to a contract under 42 U.S.C. §1395l or 42 U.S.C.
42 §1395mm or a policy issued under a demonstration project

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 authorized pursuant to the "Health Insurance for the Aged Act,"
2 42 U.S.C §1395 et seq. The term does not include:

3 (1) A] a policy [of] issued to one or more employers or labor
4 organizations, or [of] to the trustees of a fund established by one
5 or more employers or labor organizations, or combination
6 thereof, for employees or former employees, or combination
7 thereof, or for members or former members, or combination
8 thereof, of the labor organizations [; or

9 (2) A policy of any professional, trade or occupational
10 association for its members or former retired members, or
11 combination thereof, if the association:

12 (a) is composed of individuals who are actively engaged in the
13 same profession, trade or occupation;

14 (b) Has been maintained in good faith for purposes other than
15 obtaining insurance; and

16 (c) Has been in existence for at least 2 years prior to the date
17 of its initial offering of the policy or plan to its members;

18 (3) Individual policies issued pursuant to a conversion privilege
19 under a policy of group or individual insurance when the group or
20 individual policy includes provisions which are inconsistent with
21 the requirements of this act).

22 (cf: P.L.1982, c.94, s.1)

23 3. Section 3 of P.L.1982, c.94 (C.17B:26A-3) is amended to
24 read as follows:

25 3. a. No medicare supplement policy shall contain benefits
26 which duplicate any benefits provided by medicare.

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

32 (cf: P.L.1982, c.94, s.3)

33 4. Section 5 of P.L.1982, c.94 (C.17B:26A-5) is amended to
34 read as follows:

35 5. The commissioner shall [issue] promulgate regulations to
36 [establish] effectuate and enforce the provisions of P.L.1982, c.94
37 (C. 17B:26A-1 et seq.) and any regulations which are necessary to
38 conform medicare supplement policies and certificates with
39 federal law. These regulations shall include, but not be limited to:

40 a. Establishment of minimum standards for benefits [under
41 medicare supplement policies] , claim payments, marketing and
42 reporting practices and compensation arrangements;

43 b. Establishment of a uniform methodology for calculating and
44 reporting loss ratios, and requiring refunds or credits if the
45 policies or certificates do not meet loss ratio requirements;

46 c. Establishment of a process for filing of all requests for
47 premium increases and rate changes, which may include public
48 hearings as determined appropriate by the commissioner prior to
49 approval of any premium increases;

50 d. Assurance of access by the public to policy, premium and
51 loss ratio information; and

52 e. Establishment of standards for Medicare Select policies and
53 certificates at such time as this State is authorized under federal
54 law to authorize Medicare Select policies and certificates.

55 (cf: P.L.1982, c.94, s.5)
56

1 5. Section 6 of P.L.1982, c.94 (C.17B:26A-6) is amended to
2 read as follows:

3 6. a. No insurer shall deliver or issue for delivery to a resident
4 of this State a medicare supplement policy or certificate, or any
5 application, rider or endorsement to be used in connection with
6 the issuance or renewal of any such policy or certificate, unless
7 the form has been submitted to and filed by the commissioner
8 pursuant to the provisions of this subsection.

9 (1) At the expiration of 30 days after submission, such form
10 shall be deemed filed unless prior thereto it has been
11 affirmatively filed or disapproved for filing by the commissioner.

12 (2) No master policy, certificate or policy, which is
13 disapproved for filing by the commissioner during the 30-day
14 period, may be delivered or issued for delivery in this State unless
15 and until the disapproval for filing is withdrawn. Any disapproval
16 shall be subject to review in accordance with the "Administrative
17 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any form
18 which is filed by the commissioner or deemed filed may be
19 delivered or issued for delivery in this State until such time as
20 any subsequent withdrawal of the filing by the commissioner,
21 following an opportunity for a hearing held in accordance with
22 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
23 et seq.).

24 (3) The commissioner may extend the 30-day period provided
25 in paragraph (1) of this subsection for not more than 30 additional
26 days by giving written notice of extension before the expiration
27 of the initial 30-day period. In the event of extension, all of the
28 provisions of this subsection, except this provision for extension,
29 relating to the initial 30-day period shall apply to the extended
30 period instead of the initial 30-day period.

31 (4) The disapproval for filing or the withdrawal of the filing of
32 any form by the commissioner shall state in writing the grounds
33 therefor in such detail as is reasonable to inform the insurer of
34 the reasons for withdrawal or disapproval.

35 (5) The provisions of this subsection shall not apply to
36 documents which relate only to the manner of distribution of
37 benefits or to the reservation of rights and benefits under the
38 certificate or policy which are used at the request of the
39 individual insured or the policyholder.

40 (6) The disapproval by the commissioner of any form submitted
41 for filing pursuant to the provisions of this subsection may be on
42 the ground that the form contains provisions which are unjust,
43 unfair, inequitable, misleading, or contrary to law or to the public
44 policy of this State.

45 b. Any insurer providing medicare supplement insurance in this
46 State shall file annually with the commissioner its rates, rating
47 schedule and supporting documentation demonstrating that it is in
48 compliance with the applicable loss ratio standards of this State.
49 All filings of rates and rating schedules shall demonstrate that
50 the actual and expected losses in relation to premiums comply
51 with the requirements of P.L.1982, c.94 (C.17B:26A-1 et seq.)
52 and any rule or regulation promulgated thereunder.

53 c. Medicare supplement policies shall be expected to return to
54 policyholders benefits which are reasonable in relation to the

1 premium charged. The commissioner shall issue regulations to
2 establish minimum standards for loss ratios of medicare
3 supplement policies on the basis of [incurred] paid claim
4 experience and [earned] written premiums [for the entire period
5 for which rates are computed to provide coverage and] in
6 accordance with accepted actuarial principles and practices.
7 [For purposes of regulations issued pursuant to this section,
8 medicare supplement policies issued as a result of solicitations of
9 individuals through the mail or mass media advertising, including
10 both print and broadcast advertising, shall be treated as
11 individual policies.]

12 (cf: P.L.1982, c.94, s.6)

13 6. Section 7 of P.L.1982, c.94 (C.17B:26A-7) is amended to
14 read as follows:

15 7. a. In order to provide for full and fair disclosure in the sale
16 of medicare supplement policies, no medicare supplement policy
17 [shall be delivered or issued for delivery in this State, and no] or
18 certificate shall be [delivered pursuant to a group medicare
19 supplement policy] delivered or issued for delivery in this State
20 unless an outline of coverage is delivered to the applicant at the
21 time application is made.

22 b. The commissioner shall prescribe the format and content of
23 the outline of coverage required by subsection a. of this section.
24 For the purposes of this section, "format" means style,
25 arrangement and overall appearance, including such items as the
26 size, color and prominence of [type] the font used, paper size and
27 weight and the arrangement of text and captions. The outline of
28 coverage shall include:

29 (1) A description of the principal benefits and coverage
30 provided in the policy;

31 (2) [A statement of the exceptions, reductions and limitations
32 contained in the policy;] [Deleted by amendment, P.L. , c.]

33 (3) A statement of the renewal provisions, including any
34 reservation by the insurer of a right to change premiums, and
35 disclosure of the existence of any automatic renewal premium
36 increases based on the policyholder's age; and

37 (4) A statement that the outline of coverage is a summary of
38 the policy issued or applied for and that the policy should be
39 consulted to determine governing contractual provisions.

40 c. The commissioner may [prescribe] require by regulation [a
41 standard form and the contents of an informational brochure for
42 persons eligible for medicare by reason of age, which is intended
43 to improve the buyer's ability to select the most appropriate
44 coverage and improve the buyer's understanding of medicare] the
45 publication of forms and an informational brochure with a
46 standardized format and content, to serve as an aid in the
47 selection of appropriate coverage, if any, by those eligible for
48 medicare, and to aid the consumer in improving his understanding
49 of medicare benefits. Except in the case of direct response
50 solicitation insurance policies, the commissioner may require by
51 regulation that the informational brochure be provided [to any
52 prospective insureds eligible for medicare] , concurrently with
53 delivery of the outline of coverage, to all prospective insureds
54 eligible for medicare. With respect to direct response

1 solicitation insurance policies, the commissioner may require by
2 regulation that the prescribed brochure be provided upon request
3 to any prospective insureds eligible for medicare [by reason of
4 age], but in no event later than the time of policy delivery.

5 d. The commissioner may promulgate regulations for captions
6 or notice requirements [, determined to be in the public interest
7 and designed to inform prospective insureds that particular
8 insurance coverages are not medicare supplement coverages,] for
9 all accident and sickness insurance policies sold to persons
10 eligible for medicare [by reason of age], other than [:

11 (1) Medicare supplement policies;
12 (2) Disability income policies;
13 (3) Basic, catastrophic, or major medical expense policies; or
14 (4) Single premium, nonrenewable policies] for medicare
15 supplement policies, to inform those prospective insureds that the
16 particular insurance coverage is not a medicare supplement
17 policy.

18 e. The commissioner may further promulgate regulations to
19 govern the full and fair disclosure of the information in
20 connection with the replacement of [accident and sickness]
21 insurance policies or certificates by persons eligible for medicare
22 [by reason of age].

23 (cf: P.L.1982, c.94, s.7)

24 7. Section 8 of P.L.1982, c.94 (C.17B:26A-8) is amended to
25 read as follows:

26 8. Medicare supplement policies or certificates [, other than
27 those issued pursuant to direct response solicitation,] shall have a
28 notice prominently printed on the first page of the policy or
29 certificate or attached thereto stating in substance that the
30 applicant shall have the right to return the policy or certificate
31 within [10] 30 days of its delivery and to have the premium
32 refunded if, after examination of the policy or certificate, the
33 applicant is not satisfied for any reason. [Medicare supplement
34 policies or certificates issued pursuant to a direct response
35 solicitation to persons eligible for medicare by reason of age shall
36 have a notice prominently printed on the first page or attached
37 thereto stating in substance that the applicant shall have the
38 right to return the policy or certificate within 30 days of its
39 delivery and to have the premium refunded if, after examination,
40 the applicant is not satisfied for any reason.] Refunds made
41 pursuant to this section shall be made in a timely manner and
42 shall be paid directly to the applicant.

43 (cf: P.L.1982, c.94, s.8)

44 8. (New section) a. Every insurer shall file with the
45 Department of Insurance a copy of all advertising materials to be
46 used in promoting medicare supplement policies to which
47 residents of this State will have access, and through which the
48 insurer intends, or by implication purports to the reasonable,
49 targeted consumer its intent, to make such policies available for
50 purchase or enrollment in this State. The requirements of this
51 section shall apply to all advertisements in any medium, whether
52 in print or by means of television or radio broadcast. Filings shall
53 be made at least 30 days prior to the date on which the
54 advertisement is to be used in this State, or made accessible to

1 residents of this State.

2 b. The commissioner may, in the public interest, promulgate
3 regulations governing medicare supplement policy advertising
4 including, but not limited to, specific filing procedures, standards
5 upon which review may be based, celebrity endorsements, unfair
6 practices and review and disapproval procedures.

7 c. Notwithstanding the provisions of subsection b. of this
8 section, the commissioner may disapprove any advertisement for
9 use in this State at any time if he determines that the
10 advertisement misrepresents the product, misleads the targeted
11 consumer, uses a strategy which involves scare tactics,
12 unnecessarily confusing data or representation, false or
13 fraudulent statements or otherwise violates any applicable laws
14 of this State or regulations promulgated thereunder.

15 9. (New section) In addition to any other applicable penalties
16 for violation of the provisions of Title 17B of the New Jersey
17 Statutes, the commissioner may require any health insurer
18 violating the provisions of P.L.1982, c.94 (C.17B:26A-1 et seq.) to
19 cease marketing any medicare supplement policy or certificate in
20 this State which is related directly or indirectly to the violation,
21 require that insurer to take such action as is necessary to comply
22 with the provisions of that act, or both.

23 10. This act shall take effect immediately.

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STATEMENT

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28 This bill revises the current law governing medicare
29 supplement policies issued on a group or individual basis by
30 commercial insurers so that it is in accordance with the federal
31 mandate under which insurers providing medicare supplement
32 coverage must meet certain minimum standards, including
33 nonduplication of benefits already provided by medicare.

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38 Amends law governing medicare supplement insurance issued by
39 commercial insurers.

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2 b. The commissioner may, in the public interest, promulgate
3 regulations governing medicare supplement policy advertising
4 including, but not limited to, specific filing procedures, standards
5 upon which review may be based, celebrity endorsements, unfair
6 practices and review and disapproval procedures.

7 c. Notwithstanding the provisions of subsection b. of this
8 section, the commissioner may disapprove any advertisement for
9 use in this State at any time if he determines that the
10 advertisement misrepresents the product, misleads the targeted
11 consumer, uses a strategy which involves scare tactics,
12 unnecessarily confusing data or representation, false or
13 fraudulent statements or otherwise violates any applicable laws
14 of this State or regulations promulgated thereunder.

15 9. (New section) In addition to any other applicable penalties
16 for violation of the provisions of Title 17B of the New Jersey
17 Statutes, the commissioner may require any health insurer
18 violating the provisions of P.L.1982, c.94 (C.17B:26A-1 et seq.) to
19 cease marketing any medicare supplement policy or certificate in
20 this State which is related directly or indirectly to the violation,
21 require that insurer to take such action as is necessary to comply
22 with the provisions of that act, or both.

23 10. This act shall take effect immediately.

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STATEMENT

27

28 This bill revises the current law governing medicare
29 supplement policies issued on a group or individual basis by
30 commercial insurers so that it is in accordance with the federal
31 mandate under which insurers providing medicare supplement
32 coverage must meet certain minimum standards, including
33 nonduplication of benefits already provided by medicare.

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38 Amends law governing medicare supplement insurance issued by
39 commercial insurers.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1740

STATE OF NEW JERSEY

DATED: SEPTEMBER 21, 1992

The Assembly Insurance Committee reports favorably, Assembly Bill No. 1740.

This bill revises the current law governing medicare supplement policies issued on a group or individual basis by commercial insurers so that it is in accordance with the federal mandate under which insurers providing medicare supplement coverage must meet certain minimum standards, including nonduplication of benefits already provided by medicare.

The bill requires the Commissioner of Insurance to establish standards for Medicare Select policies and certificates at such time as this State is authorized under federal law to authorize Medicare Select policies and certificates. The bill also requires the commissioner to establish minimum standards for benefits, claim payments, marketing and reporting practices and compensation arrangements for Medicare supplement policies.

No insurer may deliver or issue for delivery to a resident of this State a Medicare supplement policy or certificate or any application, rider or endorsement to be used in connection with the issuance or renewal of a Medicare supplement policy or certificate unless the form has been submitted to and filed by the commissioner. The bill provides a filing procedure under which a form is deemed filed 30 days after it is submitted for filing unless it has been affirmatively filed or disapproved for filing by the commissioner during the review period. This 30-day period may be extended an additional 30 days by the commissioner. A form may be disapproved by the commissioner on the ground that it contains provisions which are unjust, unfair, misleading, inequitable, or contrary to law or to the public policy of this State. Any disapproval of a filing is subject to review pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Similarly, no filing may be subsequently withdrawn by the commissioner until there is an opportunity for a hearing pursuant to the "Administrative Procedure Act."

In addition, the bill requires any commercial insurer providing Medicare supplement insurance in this State to make an annual filing with the commissioner of its rates, rating schedule and supporting documentation to demonstrate that it is in compliance with applicable loss ratio standards established by regulation of the commissioner. The minimum standards for loss ratios of Medicare supplement policies are required to be established by the commissioner on the basis of paid claim experience and written premiums in accordance with accepted actuarial principles and practices, instead of using the current basis of incurred claim experience and earned premiums. The bill also requires the commissioner to: establish a uniform methodology for calculating

and reporting loss ratios, and requiring refunds or credits if the policies or certificates do not meet loss ratio requirements; establish a process for filing of all requests for premium increases and rate changes which may include public hearings as determined appropriate by the commissioner prior to approval of any premium increases; and assure access by the public to policy, premium and loss ratio information.

The bill contains several provisions intended to provide adequate disclosure to consumers so that they may improve their understanding of Medicare benefits and select appropriate supplemental coverage. These provisions authorize the commissioner to require the publication of coverage selection forms and an informational brochure in addition to the authority already vested in the commissioner to prescribe the format and content of outlines of coverage which are issued to all applicants for Medicare supplement coverage. The bill extends the "free-look" period provided applicants for Medicare supplement policies to a uniform 30-day review period, with a right of timely refund paid directly to any applicant who is not satisfied during that period. Currently, the "free-look" is only for 10 days for Medicare supplement policies or certificates which are not direct response solicitations.

In addition to the filing of forms and rating plans, the bill requires the filing of all advertising materials to be used in promoting Medicare supplement policies, to which residents of this State will have access, at least 30 days prior to the date on which the advertisement is to be used in, or made accessible to residents of, this State. The bill empowers the commissioner to promulgate regulations in the public interest which will govern Medicare supplement advertising, including, but not limited to, the promulgation of filing procedures, standards of review, celebrity endorsements, unfair practices and review and disapproval procedures. The commissioner may disapprove any advertisement at any time if he determines that the advertisement misrepresents the product, misleads the targeted consumer, uses a strategy which involves scare tactics, unnecessarily confusing data or representation, false or fraudulent statements or otherwise violates any applicable law or regulation.

FISCAL NOTE TO
ASSEMBLY, No. 1740

STATE OF NEW JERSEY

DATED: October 23, 1992

Assembly Bill No. 1740 of 1992 revises the current law governing Medicare supplement policies issued on a group or individual basis by commercial insurers to comply with federal minimum standards for Medicare supplement policies. Under the bill, commercial insurers would be precluded from offering benefits under a Medicare supplement policy which duplicate any benefits provided by Medicare. The bill requires the Commissioner of Insurance to establish standards for Medicare Select policies and certificates at such time as this State is authorized under federal law to authorize Medicare Select policies and certificates. The bill also requires the commissioner to establish minimum standards for benefits, claim payments, marketing and reporting practices and compensation arrangements for Medicare supplement policies.

Although the Office of Management and Budget and the Department of Insurance have not provided a fiscal note worksheet for this bill, the Department of Insurance has communicated in a memorandum, that implementation of the revisions contained in the bill is expected to be accomplished by utilizing current staff.

The Office of Legislative Services (OLS) agrees that implementation of revisions contained in the bill could be accomplished by the department's current staff at no additional administrative cost. Therefore, this bill would have no impact on the State budget.

The OLS notes that under federal law states may develop their own regulatory program for Medicare supplement policies marketed within their borders. A state's program must be approved by the Health Care Financing Administration, and in order to be approved, a state must adopt standards for Medicare supplement policies which are equal to or more stringent than the standards adopted by the National Association of Insurance Commissioners (NAIC) in its model acts and regulations. This bill forms the statutory framework for the Department of Insurance to adopt the NAIC model regulations for Medicare supplement policies and complies with federal minimum standards for Medicare supplement policies.

The OLS also notes that if New Jersey does not meet the federal requirements, Medicare supplement policies will be subject to approval by the United States Secretary of Health and Human Services under the Federal Certification Program and the State Department of Insurance before a Medicare supplement policy could be issued in New Jersey. Therefore, failure to comply with federal minimum standards would create a two-tier system which could financially burden insurers who wish to introduce new Medicare supplement policies into the market and could increase the consumer cost of such policies.

This fiscal note has been prepared pursuant to P.L.1980, c.67.