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The Modernization of Medigap Plans

Legislative Summary

by Marianne Miller

Because Medigap coverage supplements a federal program, the federal government has assumed an active role in the regulation of this product. Congress has established certain minimum federal standards that the NAIC has incorporated into their Medigap model regulation. As long as a state's Medigap regulations meet (or exceed) the federal minimum standards, the state retains its jurisdiction over Medigap regulation. There are minimum federal standards for a range of key product elements including plan design, underwriting, minimum loss ratios, agent compensation and others.

On Nov. 5, 1990, Medigap plans were standardized nationwide into a uniform set of benefit packages (Plan A through Plan J) with the exception of three states. In the Conference Report to the Medicare Modernization Act of 2003, Congress encouraged the NAIC to modernize the 1990 benefit packages. On Sept. 24, 2008, the NAIC approved new standard benefit plans in a revised Medigap Model Regulation. This journey will end on June 1, 2010, as all policies that become effective on or after that date must contain the new benefit definitions.

Legislative Summary

In 2003, Congress passed the Medicare Modernization Act (MMA) which created a voluntary Medicare outpatient prescription drug benefit (Part D).[1] The MMA directed the NAIC to make changes to its Medigap Model Regulation to conform to MMA and for states to adopt such changes into their laws and/or regulations.[2] Additionally, the Conference Report to the MMA encouraged the NAIC to consider broader changes in Medigap standards, beyond those specifically required in the Act. In particular, the conferees suggested consideration of changes to the standardized Medigap benefit packages which had been in place since 1990.[3]

The NAIC, in consultation with stakeholders, developed changes to the 1990 standardized benefit packages that are responsive to changes in the marketplace

and consumer preferences that have arisen since the creation of the original benefit packages in 1990. On March 11, 2007, the NAIC approved an amended Medigap Model Regulation which provided for various changes to the current Medigap standardized plans. However, the NAIC instructed states not to adopt or implement these changes until the passage of federal legislation amending Section 1882 of the Social Security Act, providing for inclusion of the 2007 revised NAIC Medigap Model Regulation as part of the federal minimum standards. The changes made by the NAIC to the Medigap benefit packages are as follows:

Elimination of Plans:

- Elimination of Plans H, I, and J (which contained prescription drug benefits prior to the Medicare Modernization Act).
- Elimination of Plan E (as it becomes identical to Plan D, once the Preventive Care Benefit and the At-Home Recovery benefit are removed).

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[1] The Medicare outpatient prescription drug benefit, entitled Medicare Part D, was established by H.R. 1, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

[2] See "State-Adopted Changes to Medigap Minimum Standards to Conform to MMA, September 2004 – Present," AHIP, Dec. 20, 2006.

[3] See the Conference Report to H.R. 1, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, under the description of present law regarding the bill's Medigap amendments.

Addition of New Benefit Plans Options with higher Cost-Sharing and Lower Premiums:

- Creation of new Plan M—with increased cost-sharing (50 percent coverage of the Part A Deductible, and no coverage for the Part B Deductible).
- Creation of new Plan N—with a new copay structure ($10 copay for physician visits; $50 copay on Emergency Room), and no coverage for the Part B Deductible.

Modernization of Benefits:

- Elimination of the limited At-Home Recovery benefit (which was offered only in Plans D, G, I, and J) in favor of a new Hospice benefit to be added as a Core benefit to every plan.
- Elimination of the underutilized Preventive Care Benefit (which was offered in Plans E and J) in recognition of the fact that the Medicare program has changed over the years to include significantly more preventive care benefits.
- Replacement of the 80 percent Part B Excess Benefit in Plan G to 100 percent coverage.

States must incorporate GINA provision into their statutes or regulations to the NAIC model law no later than July 1, 2009.

2008 Changes to the Federal Medigap Minimum Standards

On July 15, 2008, Congress passed into law H.R. 6331, the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), which directed the Secretary of HHS to implement the March 11, 2007 NAIC Medigap model regulations, as amended to meet additional Medigap federal standards established in MIPPA and in H.R. 493, the Genetic Information Nondiscrimination Act of 2008 (GINA).

MIPPA Medigap Provisions and Transition Period:

- MIPPA provides a timeline for the implementation of new (2010) standardized plans:
- By Oct. 31, 2008, the NAIC must approve an amended Medigap Model Regulation reflecting changes to the standardized Medigap plan types (as approved by the NAIC on March 11, 2007), and other new federal Medigap standards contained in PL 110-275 (MIPPA) and PL 110-233 (GINA). [The NAIC approved amendments to their Medigap Model Regulation on Sept. 24, 2008.]
- Within 1 year of the NAIC Model approval date, which is Sept. 24, 2009, states must incorporate these new federal standards into their laws and regulations.
- June 1, 2010 is established as the earliest effective date for coverage under a 2010 standardized plan policy, and as the cut-off date for carriers issuing policies with the 1990 standardized benefit packages.
- The Act requires carriers offering any Medigap plan in addition to the core benefit package (Plan A) in a state to also make either a Plan C or a Plan F policy available for sale.
- It also provides that any health insurance policy that is designed to supplement a Medicare Advantage plan is subject to the federal Medigap requirements.
- Carriers are not required to offer existing policyholders the opportunity to exchange their existing 1990 policies for a 2010 policy without medical underwriting. If a carrier chooses to allow such exchanges, it is subject to several "fairness" requirements related to rating and pre-existing condition limitations.

GINA Medigap Provisions:

- Beginning May 21, 2009, Medigap carriers are prohibited from using an individual's genetic information to determine eligibility, establish premiums or premium contributions, or impose any benefit exclusions based upon a pre-existing condition.
- GINA also prohibits Medigap carriers from requiring an individual to undergo a genetic test.
- States must incorporate GINA provision into their statutes or regulations to the NAIC model law no later than July 1, 2009.

The Seniors Issues Task force of the NAIC has prepared a Medigap implementation guide for state insurance departments. The guide is available on the NAIC Web site at: *www.naic.org/documents/committees_b_senior_issues_medigap_impl_guide.pdf.* ■