

TO: SENIOR ISSUES TASK FORCE MEMBERS

FROM: MEDICARE SUPPLEMENT MODEL REVISIONS IMPLEMENTATION  
SUBGROUP

DATE: JUNE 14, 2009

RE: 2010 MEDIGAP PLANS AND 5 YEAR PROHIBITION AFTER  
DISCONTINUANCE

As states and companies move towards implementation of the 2010 Medicare supplement plans, as contained in the revisions to the Medicare supplement Model Regulation approved by the NAIC in 2008, the issue of the five-year prohibition after discontinuance has frequently been raised. This memorandum is intended to provide guidance to states on this matter.

Section 15E(1)(b) of the NAIC Model Regulation states:

“(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) 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.”

Under this provision, a state could determine that an issuer who sold Plan A, B, C, D, F, High Deductible F, or G prior to June 1, 2010 and failed to file to offer the new (modernized) version of the same letter plan, was considered to have discontinued that plan and would be prohibited from offering the same letter plan in the state for five years. However, the provision does provide for discretion by the commissioner to shorten the five-year time period.

In order to provide a consistent approach to this issue, we suggest that states provide these issuers with a one-year grace period before the five-year prohibition would become effective. Therefore, companies who offered one of the affected Medicare supplement plans (A, B, C, D, F, High Deductible F, and G) before June 1, 2010 could cease to offer the same letter plan for up to one year (June 1, 2011) before being subjected to the five-year prohibition. Companies who chose to file within the one-year grace period could avoid the five-year prohibition.

This provision of the Model would not impact Plan M and Plan N during this transitional period, as these two plans are completely new and no companies are able to offer them with effective dates prior to June 1, 2010. Similarly, this provision does not impact Plan K and Plan L during this transitional period, as no changes were made to these two plans as a result of MMA and the MIPPA provisions. Companies should not be required to refile these plans (K & L) with the states in order to continue to offer them.

Issuers should confirm with the state Department of Insurance that it is allowing the one year grace period.

If you have any questions or require any additional information, you may also contact Jane Sung at the NAIC at (202) 471-3979 or [jsung@naic.org](mailto:jsung@naic.org).