

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2144

S.P. 840

In Senate, January 9, 1992

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRAUN of Knox

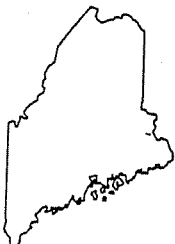
Cosponsored by Representative ERWIN of Rumford and Senator KANY of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

**An Act to Amend the Law Pursuant to the Medicare Supplement
Insurance Minimum Standards Model Act.**

(EMERGENCY)



Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, federal law requires the states to adopt the National Association of Insurance Commissioners' Medicare supplemental insurance minimum standards model act and rule prior to July 30, 1992; and

Whereas, immediate action is necessary to ensure that Maine can meet that deadline or prevent federal preemption of its Medicare supplemental insurance regulatory program; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA §5001, as enacted by PL 1981, c. 234, §4, is amended to read:

§5001. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Applicant.** "Applicant" means:

A. In the case of an individual Medicare supplement policy ~~or subscriber contract~~, the person who seeks to contract for insurance benefits; and

B. In the case of a group Medicare supplement policy ~~or subscriber contract~~, the proposed certificate holder.

2. **Certificate.** "Certificate" means any certificate delivered or issued for delivery in this State under a group Medicare supplement policy, ~~which policy has been delivered or issued for delivery in this State.~~

2-A. Certificate form. "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

2-B. Issuer. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations and any other entity delivering or

2 issuing for delivery in this State Medicare supplement policies
3 or certificates.

4 3. Medicare. "Medicare" means the "United--States Health
5 Insurance for the Aged Act," Title XVIII of the Social Security
6 Amendments of 1965,--Public-Law-89-97, as amended.

8 4. Medicare supplement policy. "Medicare supplement policy"
9 means a group or individual policy of health accident and
10 sickness insurance or a subscriber contract of a nonprofit
11 hospital or medical service organization or nonprofit health care
12 plan or health maintenance organization other than a policy
13 issued pursuant to a contract under the federal Social Security
14 Act, Section 1876 or Section 1833 or an issued policy under a
15 demonstration project authorized pursuant to amendments to the
16 federal Social Security Act, which is advertised, marketed or
17 designed primarily as a supplement to reimbursements made under
18 Medicare for the hospital, medical or surgical expenses of
19 persons eligible for Medicare by reason of age. Such term does
20 not include:

22 A.--A policy or contract issued to one or more employers or
23 labor organizations or of the trustees of a fund established
24 by one or more employers or labor organizations, or
25 combination thereof, or for members or former members, or
26 combination thereof, of the labor organizations;

28 B.--A policy or contract issued to any professional, trade
29 or occupational association for its members or former or
30 retired members, or combination thereof, if such
31 association:

32 (1) Is composed of individuals all of whom are
33 actively engaged in the same profession, trade or
34 occupation;

36 (2) Has been maintained in good faith for purposes
37 other than obtaining insurance; and

40 (3) Has been in existence for at least 2 years prior
41 to the date of its initial offering of such policy or
42 plan to its members; or b1-1981, c-234, § 4 (new).
43 ?b--

44 C.--Individual policies or contracts issued pursuant to a
45 conversion privilege under a policy or contract of group or
46 individual insurance when such group or individual policy or
47 contract includes provisions which are inconsistent with the
48 requirements of this chapter.

50

2 **4-A. Policy form.** "Policy form" means the form on which
the policy is delivered or issued for delivery by the issuer.

4 **5. Superintendent.** "Superintendent" means the
Superintendent of Insurance.

6 **Sec. 2. 24-A MRSA §5001-A** is enacted to read:

8 **§5001-A. Applicability and scope**

10 **1. Application.** Except as otherwise specifically provided
12 in section 5004, this chapter applies to:

14 **A. All Medicare supplement policies delivered or issued for**
16 **delivery in this State on or after the effective date of**
this section; and

18 **B. All certificates issued under group Medicare supplement**
20 **policies, which certificates have been delivered or issued**
for delivery in this State.

22 **2. Employers or labor organizations.** This chapter does not
24 **apply to a policy of one or more employers or labor**
organizations, or of the trustees of a fund established by one or
26 **more employers or labor organizations, or combination thereof,**
for employees or former employees or a combination thereof, or
28 **for members or former members, or a combination thereof, of the**
labor organizations.

30 **3. Plans not marketed as Medicare supplements.** The
32 **provisions of this chapter are not intended to prohibit or apply**
to insurance policies or health care benefit plans, including
34 **group conversion policies, provided to Medicare eligible persons**
that are not marketed or held to be Medicare supplement policies
36 **or benefit plans.**

38 **Sec. 3. 24-A MRSA §5002,** as amended by PL 1991, c. 48, §3, is
repealed.

40 **Sec. 4. 24-A MRSA §5002-A** is enacted to read:

42 **§5002-A. Standards for policy provisions and authority to**
44 **adopt rules**

46 **1. Duplicate benefits.** A Medicare supplement policy or
certificate in force in the State may not contain benefits that
48 **duplicate benefits provided by Medicare.**

50 **2. Standardization.** The superintendent may adopt rules
specifying the minimum Medicare supplement contract benefits

2 required in the State and the optional benefits available for
3 sale in the State. All other benefits or options are prohibited
4 in a Medicare supplement contract subject to this chapter.

6 3. Preexisting conditions. Notwithstanding any other
7 provision of law of this State, a Medicare supplement policy or
8 certificate may not exclude or limit benefits for losses incurred
9 more than 6 months from the effective date of coverage because
10 the medical condition involved a preexisting condition. The
11 policy or certificate may not define a preexisting condition more
12 restrictively than as a condition for which medical advice was
13 given or treatment was recommended by or received from a
14 physician within 6 months before the effective date of coverage.

16 4. Specific standards. The superintendent shall adopt
17 rules to establish specific standards for policy provisions of
18 Medicare supplement policies and certificates. These standards
19 must be in addition to and in accordance with applicable laws of
20 this State. No requirement of the insurance laws relating to
21 minimum required policy benefits, other than the minimum
22 standards contained in this chapter, applies to Medicare
23 supplement policies and certificates. The standards may cover,
24 but are not limited to:

26 A. Terms of renewability;

28 B. Initial and subsequent conditions of eligibility;

30 C. Nonduplication of coverage;

32 D. Probationary periods;

34 E. Benefit limitations, exceptions and reductions, which
35 may not be more restrictive than those of Medicare for any
36 type of care covered under the policy;

38 F. Elimination periods;

40 G. Requirements for replacement;

42 H. Recurrent conditions; and

44 I. Definitions of terms.

46 5. Minimum standards for benefits, claims, marketing,
47 compensation and reporting. The superintendent shall adopt
48 reasonable rules to establish minimum standards for benefits,
49 claims payment, marketing practices and compensation arrangements
50 and reporting practices for Medicare supplement policies and
certificates.

2 6. Other policies not prohibited. Nothing in this section
3 may be construed to prohibit the sale of insurance policies or
4 contracts to persons eligible for Medicare by reason of age
5 because those policies or contracts fail to meet the requirements
6 of this chapter. Such policies may not be advertised, marketed
7 or designed as Medicare supplement policies.

8
9 7. Method of identification. The superintendent shall
10 prescribe the method of identification of Medicare supplement
11 policies. The superintendent shall prescribe a method of
12 identification of health insurance policies other than Medicare
13 supplement policies or contracts that are advertised, marketed or
14 designed for persons eligible for Medicare by reason of age.
15 That method may include, but is not limited to, a requirement
16 that such policies clearly indicate they are limited benefit
17 health coverage policies and clearly specify that they do not
18 meet the minimum standards for Medicare supplement policies.

19 8. Conformance of policies to federal law. The
20 superintendent may adopt from time to time such reasonable rules
21 as are necessary to conform Medicare supplement policies and
22 certificates to the requirements of federal law and rules adopted
23 pursuant to federal law, including but not limited to:

24 A. Requiring refunds or credits if the policies or
25 certificates do not meet loss ratio requirements;

26 B. Establishing a uniform methodology for calculating and
27 reporting loss ratios;

28 C. Assuring public access to policies, premiums and loss
29 ratio information of issuers of Medicare supplement
30 insurance;

31 D. Establishing a process for approving or disapproving
32 policy forms and certificate forms and proposed premium
33 increases;

34 E. Establishing a policy for holding public hearings prior
35 to approval of premium increases; and

36 F. Establishing standards for Medicare select policies and
37 certificates.

38
39 9. Prohibited policy provisions. The superintendent may
40 adopt reasonable rules that prohibit policy provisions not
41 specifically authorized by statute that in the opinion of the
42 superintendent are unjust, unfair or unfairly discriminatory to
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2 any person insured or proposed to be insured under a Medicare
3 supplement policy or certificate.

4 **Sec. 5. 24-A MRS §5003**, as amended by PL 1989, c. 852, §1,
5 is repealed.

6 **Sec. 6. 24-A MRS §5004**, as amended by PL 1989, c. 852, §§2
7 and 3, is further amended to read:

10 **§5004. Loss ratio standards**

12 1. Any Medicare supplement policy or contract is subject to
13 the minimum loss ratio standards of section 2413, subsection 1,
14 paragraph F, as well as any other laws of this State as apply to
15 rate filings with respect to health insurance and nonprofit
16 hospital and medical service organizations and nonprofit health
17 care plan contracts.

18 2. ~~If a Medicare supplement certificate is to be provided~~
19 ~~to a resident of this State under a master policy issued for~~
20 ~~delivery outside this State, the group certificate shall be filed~~
21 ~~with the superintendent at least 60 days prior to any~~
22 ~~solicitation in this State, along with sufficient information~~
23 ~~concerning the nature of the group, to permit the superintendent~~
24 ~~to make the determinations required by section 2412. Medicare~~
25 supplement policies must provide for a return to policyholders
26 benefits that are reasonable in relation to the premium charged.
27 The superintendent shall issue reasonable rules to establish
28 minimum standards for loss ratios of Medicare supplement policies
29 on the basis of incurred claims experience, or incurred health
30 care expenses where coverage is provided by a health maintenance
31 organization on a service rather than reimbursement basis, and
32 earned premiums in accordance with accepted actuarial principles
33 and practices.

34 **Sec. 7. 24-A MRS §5005**, as enacted by PL 1981, c. 234, §4,
35 is amended to read:

36 **§5005. Disclosure standards**

37 1. **Delivery of outline of coverage.** In order to provide for
38 full and fair disclosure in the sale of Medicare supplement
39 policies and ~~contracts~~, no such Medicare supplement policy or
40 ~~contract~~ certificate may be delivered ~~or issued for delivery~~ in
41 this State, unless the an outline of coverage described ~~in~~
42 ~~subsection 2~~ is delivered to the applicant at the time
43 application is made.

44 2. **Format; content or outline.** The superintendent shall
45 prescribe a ~~uniform~~ the format and content of the outline of
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2 coverage required by subsection 1. For purposes of this section,
"format" means style, arrangements and overall appearance,
4 including such items as the size, color and prominence of type
and the arrangement of text and captions. The outline of coverage
shall must include:

6 A. A description of the principal benefits and coverage
8 provided in the policy;

10 B. ~~A statement of the exceptions, reductions and
12 limitations contained in the policy;~~

14 C. A statement of the renewal provisions, including any
reservation by the ~~insurer~~ issuer of a right to change
16 premiums; and disclosure of the existence of any automatic
renewal premium increases based on the policyholder's age;
18 and

20 D. A statement that the outline of coverage is a summary of
the policy issued or applied for and that the policy should
22 be consulted to determine governing contractual provisions.

24 **3. Standard form; contents of informational brochure.** The
superintendent may prescribe by rule a standard form and the
26 contents of an informational brochure for persons eligible for
Medicare ~~by reason of age~~, which is intended to improve the
28 buyer's ability to select the most appropriate coverage and
improve the buyer's understanding of Medicare. Except in the case
30 of direct response insurance policies, the superintendent may
require by regulation that the informational brochure be provided
32 to any prospective insureds eligible for Medicare concurrently
with the delivery of the outline of coverage. With respect to
34 direct response insurance policies, the superintendent may
require by rule that the prescribed brochure ~~must~~ be provided
36 upon request to any prospective insureds eligible for Medicare ~~by
reason of age upon request~~, but in no event later than the time
of policy delivery.

38 **3-A. Captions or notice requirements.** The superintendent
40 may adopt rules for captions or notice requirements determined to
be in the public interest and designed to inform the prospective
42 insureds that particular insurance coverages are not Medicare
supplement coverages for all accident and sickness insurance
44 policies sold to persons eligible for Medicare by reason of age
other than:

46 A. Medicare supplement policies;

48 B. Disability income policies;

50

2 C. Basic, catastrophic or major medical expense policies; or

4 D. Single premium, nonrenewable policies.

6 4. **Rules.** The superintendent may ~~premulgate~~ adopt
reasonable rules to govern the full and fair disclosure of
8 information in connection with the replacement of Medicare
supplement accident and sickness policies and, subscriber
contracts or certificates by persons eligible for Medicare.

10 **Sec. 8. 24-A MRSA §5006**, as enacted by PL 1981, c. 234, §4,
12 is repealed.

14 **Sec. 9. 24-A MRSA §5006-A** is enacted to read:

16 **§5006-A. Filing requirements for advertising**

18 Every issuer of Medicare supplement insurance policies or
certificates in this State shall provide a copy of any Medicare
20 supplement advertisement intended for use in this State, whether
through written, radio or television medium, to the
22 superintendent for review or approval by the superintendent at
least 30 days prior to the date the advertisement will be used in
24 this State.

26 **Sec. 10. 24-A MRSA §5007**, as amended by PL 1989, c. 27, §5,
is further amended to read:

28 **§5007. Notice of free examination**

30 Medicare supplement policies ~~or~~ and certificates ~~shall~~ must
32 have a notice prominently printed on the first page of the policy
or certificate or attached ~~thereto~~ to the policy or certificate,
34 stating in substance that the applicant ~~shall have~~ has the right
to return the policy or certificate within 30 days of its
36 delivery and to have the premium refunded if, after examination
of the policy or certificate, the applicant is not satisfied for
38 any reason. Any refund made pursuant to this section must be
paid directly to the applicant by the issuer in a timely manner.

40 **Sec. 11. 24-A MRSA §5008**, as enacted by PL 1989, c. 27, §6,
42 is repealed.

44 **Sec. 12. 24-A MRSA §5009**, as enacted by PL 1989, c. 27, §6,
is repealed.

46 **Sec. 13. 24-A MRSA §§5010 and 5011** are enacted to read:

48 **§5010. Administrative procedure**

