ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE REPEALING, RENUMBERING, AMENDING AND CREATING A RULE

To repeal Ins 3.39(34)(b)2. f. and fm.; to renumber Ins 3.39(34)(c) and (d); to amend Ins 3.39(4)(a) 18p., 3.39(5)(c) 4., 3.39(34)(a) 1. and 2., 3.39(34)(b) (intro), 3.39(34)(b) 2.(intro), a. and b., 3.39(34)(b) 3. (intro), a. and c., 3.39(34)(b) 4. (intro), 3.39(34)(b) 5. a., 3.39(34)(b) 6.; and to create Ins 3.39(34)(c) and (d), Wis. Adm. Code, relating to Medicare Supplement insurance policies.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: s. 601.41(3), 601.42, 628.34(12), 628.38, 631.20, 632.76, 632.81, Stats.

Statutes interpreted: s. 600.03 (28r), 628.34 (12), Stats.

Due to changes in federal law as a result of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act ("BIPA"), amendments are necessary in order that Wisconsin Medicare supplement insurance regulation is in compliance with the national association of insurance commissioners ("NAIC") Medicare supplement insurance minimum standards model act modifications.

Under the previous federal law and model act a potential timing gap was created such that persons who were provided notice of cessation or termination of

employee welfare benefit plans in excess of 63 days were put in an untenable position of withdrawing early from the employee welfare benefit plan that may have attractive insurance features (such as more comprehensive coverage) and switching to the Medigap policy so as not to risk losing their guaranteed issue rights as they are unable to simultaneously keep a Medigap application current and delay the effective date of the policy beyond the 63 day window. The modifications to BIPA and the NAIC model act, and regulation and as reflected in the changes made to INS 3.39, altered time periods to provide the broadest application of when and how the guaranteed issue period is triggered and calculated for eligible persons as defined within s. Ins 3.39(34)(b) to alleviate most of the potential problems.

Specifically, s. Ins 3.39(34)(c), as newly created, provides that the guaranteed issue period for persons enrolled in an employee welfare benefit plan begins on the later of two dates: (1) the date the individual receives a notice of termination or cessation of all supplemental health benefits and ends 63 days after the date of termination of the coverage. Or, (2) if the individual was not directly notified, the date the individual received notice that a claim has been denied because the plan terminated or ceased offering insurance and ends 63 days after the date of the actual notice of the denied claim.

Section Ins 3.39(34)(b) describes several additional distinct groups of persons who may be eligible for guaranteed issue of Medicare supplement or Medigap coverage. Several subsections within s. Ins 3.39(34)(b) were modified slightly without significant changes. Section Ins 3.39(34)(c), as newly created, references the different groups of eligible persons and specific situations that then trigger guaranteed issue rights and provide time periods specific to each situation.

Modifications were also made for extended Medicare supplement insurance guaranteed issue as a result of interrupted trial periods. Section Ins 3.39(34)(d), as newly created, describes the circumstances of how and when such an extension is applicable for eligible persons who had a Medicare supplement policy and subsequently enrolled, for the first time, in a Medicare + Choice or other described plan under s. Ins 3.39(34)(b) 5. and 6., the manner in which the guaranteed issue period of time will be treated.

Other modifications made in this proposed rule include clarification of eligible expenses that are to include outpatient services paid under the prospective payment system and correcting references to Medicare supplement insurance and federal provisions.

FINDING OF EMERGENCY

The commissioner of insurance ("Commissioner") finds that an emergency exists and that promulgation of this evergency rule is necessary for the preservation of the public peace, health, safety and welfare. The facts constituting the emergency are as follows:

These changes clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC model act implementing the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act ("BIPA"), by January 1, 2003. In order to provide more certainty and provide guaranteed issue to the appropriate persons in Wisconsin, it is necessary that the changes be put into effect as soon as possible. In addition, since insurers are required

to be in compliance with the Federal law, implementing this rule effective on the same date will allow insurers to modify their policies one time rather than two.

The Commissioner is sending contemporaneously with this Emergency Rule, the permanent rule, Clearinghouse No. 02-118, to the Legislature for review. A hearing on the permanent rule, pursuant to published notice thereof, was held on November 7, 2002. The Office has received comment and revised the rule as necessary to incorporate comments from the public and as contained within the Clearinghouse Report.

SECTION 1. Ins 3.39(4)(a)18p. is amended to read:

Ins 3.39(4)(a)18p. Each Medicare supplement policy shall provide, and contain within the policy, that benefits and premiums under the policy shall be suspended for ~~the~~ any period that may be provided by federal regulation, at the request of the policyholder if the policyholder is entitled to benefits under section 226 (b) of the Social Security Act and is covered under a group health plan, as defined in section 1862 (b)(1)(A)(v)of the Social Security Act. If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of ~~entitlement~~enrollment in the group health plan.

SECTION 2. Ins 3.39 (5) (c) 4. is amended to read:

Ins 3.39(5)(c)4. All Medicare Part B eligible expenses to the extent not paid by Medicare, or in the case of hospital outpatient department services paid under a

prospective payment system, the copayment amount, including outpatient psychiatric care, subject to the Medicare Part B calendar year deductible;

SECTION 3. Ins 3.39 (34)(a) 1. and 2., are amended to read:

Ins 3.39(34)(a) *Guaranteed issue*. 1. Eligible persons are those individuals described in par. (b) who ~~apply to enroll under the policy not later than 63 days after the date of the termination of enrollment described in par. (b),~~seek to enroll under the policy during the period specified in par. (c), and who submit evidence of the date of termination or disenrollment with the application for a ~~medicare~~Medicare supplement policy.

2. With respect to eligible persons, an issuer may not deny or condition the issuance or effectiveness of a ~~medicare~~Medicare supplement policy described in par. ~~(c)~~ (e) that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a ~~medicare~~Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition and shall not impose an exclusion of benefits based on a preexisting condition under such a ~~medicare~~Medicare supplement policy.

SECTION 4. Ins 3.39(34)(b) (intro) is amended to read:

Ins 3.39(34)(b) (intro). *Eligible persons*. An eligible person is an individual described in any of the following ~~paragraphs~~subdivisions:

SECTION 5. Ins 3.39(34)(b) 2. (intro), a. and b. are amended to read:

Ins 3.39(34)(b) 2. (intro). The individual is enrolled with a Medicare + Choice organization under a Medicare + Choice plan under part C of Medicare, and any of the

following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under section 1894 of the Social Security Act, and there are circumstances similar to those described in subpars. a. to ~~f~~e. that would permit discontinuance of the individual's enrollment and such provider if such individual were enrolled in a Medicare + Choice plan:

a. The certification of the organization or plan under this Part C of Medicare has been terminated~~, or the organization or plan has notified the individual of an impending termination of the certification.~~; or

b. The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides~~, or has notified the individual of an impending termination or discontinuance of the plan~~.

SECTION 6. Ins 3.39(34)(b) 2. f. and fm. are repealed.

SECTION 7. Ins 3.39(34)(b) 3. (intro), a. and c. are amended to read:

Ins 3.39(34)(b)3. (intro). The individual is enrolled with any of the following:

Ins 3.39(34)(b)3. a. An eligible organization under a contract under Section 1876 of the Social Security Act (~~medicare risk or~~Medicare cost);

c. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

SECTION 8. Ins 3.39(34)(b) 4. (intro) is amended to read:

Ins 3.39(34)(b)4. (intro) The individual is enrolled under a ~~medicare~~Medicare supplement policy and the enrollment ceases because:

SECTION 9. Ins 3.39(34)(b) 5. a. is amended to read:

Ins 3.39(34)(b)5. a. The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare + Choice organization under a Medicare + Choice plan under part C of Medicare, any eligible organization under a contract under section 1876 of the Social Security Act, Medicare ~~risk or~~cost, any similar organization operating demonstration project authority, any PACE ~~program~~provider under section 1894 of the Social Security Act, ~~an organization under an agreement under section 1833 (a)(1)(A), health care prepayment plan,~~ or a Medicare Select policy; and

SECTION 10. Ins 3.39(34)(b)6. is amended to read:

Ins 3.39(34)(b)6. The individual, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in a Medicare + Choice plan under part C of Medicare, or ~~in~~with a PACE ~~program~~provider under section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than ~~twelve (~~12~~)~~ months after the effective date of enrollment.

SECTION 11. Ins 3.39(34)(c) and (d) are renumbered to 3.39(34)(e) and (f).

SECTION 12. Ins 3.39(34)(c) and (d) are created to read:

Ins 3.39(34)(c) *Guaranteed issue time periods.* 1. In the case of an individual described in par. (b) 1., the guaranteed issue period begins on the later of the following dates:

a. The date the individual receives a notice of termination or cessation of some or all supplemental health benefits and ends 63 days after the date the applicable coverage is terminated.

b. The date the individual receives notice that a claim has been denied because of such a termination or cessation, if the individual did not receive notice of the plan's termination or cessation, and ends 63 days after the date of notice of the claim denial.

2. In the case of an individual described in pars. (b) 2., 3., 5. or 6., whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends on the date that is 63 days after the date the applicable coverage is terminated.

3. In the case of an individual described in par. (b) 4. a., the guaranteed issue period begins on the earlier of either: the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice, if any; or the date that the applicable coverage is terminated. The guaranteed issue period ends on the date that is 63 days after the date such coverage is terminated.

4. In the case of an individual described in pars. (b) 2., 4. b., 4. c., 5., or 6. who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date.

5. In the case of an individual described in par. (b) but not described in the preceding provisions of this paragraph, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

Ins 3.39(34)(d) *Extended Medigap access for interrupted trial periods.* 1. In the case of an individual described in par. (b) 5., or deemed to be so described

pursuant to this subdivision, whose enrollment with an organization or provider described in par. (b) 5. a. is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in par. (b) 5.

2. In the case of an individual described in par. (b) 6., or deemed to be so described pursuant to this paragraph, whose enrollment with a plan or in a program described in par. (b) 6. is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in par. (b) 6.

3. For purposes of pars. (b) 5. and 6., no enrollment of an individual with an organization or provider described in par. (b) 5. a., or with a plan or in a program described in par. (b) 6., may be deemed to be an initial enrollment under this paragraph after the 2-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

SECTION 13. This rule first applies to policies issued or renewed on or after January 1, 2003.

Dated at Madison, Wisconsin, this ______ day of ________________, 2002.

____

Connie L. O'Connell
Commissioner of Insurance

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

FISCAL ESTIMATE WORKSHEET — 2001 Session

Detailed Estimate of Annual Fiscal Effect

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number **INS 3.39**

Subject
Medicare supplement insurance

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

Annualized Costs:	**Annualized Fiscal impact on State funds from:**	
A. State Costs by Category	**Increased Costs**	**Decreased Costs**
State Operations - Salaries and Fringes	**$ 0**	**$ -0**
(FTE Position Changes)	(**0** FTE)	(**-0** FTE)
State Operations - Other Costs	**0**	**-0**
Local Assistance	**0**	**-0**
Aids to Individuals or Organizations	**0**	**-0**
TOTAL State Costs by Category	**$ 0**	**$ -0**
B. State Costs by Source of Funds	**Increased Costs**	**Decreased Costs**
GPR	**$ 0**	**$ -0**
FED	**0**	**-0**
PRO/PRS	**0**	**-0**
SEG/SEG-S	**0**	**-0**
C. State Revenues Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	**Increased Rev.**	**Decreased Rev.**
GPR Taxes	**$ 0**	**$ -0**
GPR Earned	**0**	**-0**
FED	**0**	**-0**
PRO/PRS	**0**	**-0**
SEG/SEG-S	**0**	**-0**
TOTAL State Revenues	**$ 0 None**	**$ -0 None**

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ **None 0**	$ **None 0**
NET CHANGE IN REVENUES	$ **None 0**	$ **None 0**

Prepared by: Julie E. Walsh	**Telephone No.** (608) 264-8101	**Agency** Insurance
Authorized Signature:	**Telephone No.**	**Date** (mm/dd/ccyy)

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

FISCAL ESTIMATE — 2001 Session

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	**Administrative Rule Number**
	INS 3.39

Subject

Medicare supplement insurance

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No local government costs

1. ☐ Increase Costs
   ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
   ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues
   ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
   ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
   ☐ Towns ☐ Villages ☐ Cities
   ☐ Counties ☐ Others _____
   ☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Long-Range Fiscal Implications

None

Prepared by:	**Telephone No.**	**Agency**
Julie E. Walsh	(608) 264-8101	Insurance
Authorized Signature:	**Telephone No.**	**Date** (mm/dd/ccyy)