

**Title 23. Public Utilities and Regulated Industries**  
**Chapter I. State Insurance Department, Department of Commerce**  
**Subchapter B. Life, Health, and Accident**  
**Part 89. Minimum Standards for Medicare Supplement Policies**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"SECTION 2. AUTHORITY.

This rule is issued pursuant to the authority vested in the Insurance Commissioner under Act 72 of 1991 (First Extraordinary Session), Act 684 of 2017, Ark. Code Ann. § 23-79-404, §23 61 108, §23 66 201 through §23 66 214, §§23 66 301, et seq., §23 79 109, §23 79 110, §23 85 105, §23 74 122, §23 75 111, §23 76 125 and §§25 15 202, et seq., known as the Arkansas Administrative Procedure Act, and Public Law 101 508."

"SECTION 26. SEVERABILITY

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 27. EFFECTIVE DATE

This rule shall be effective on February 1, 2018."

**Subpart 1. Generally**

**23 CAR § 89-101. Purpose.**

The purpose of this part is to:

(1) Provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies;

- (2) Facilitate public understanding and comparison of such policies;
- (3) Eliminate provisions contained in such policies that may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and
- (4) Provide for full disclosures in the sale of accident and health insurance coverages to persons eligible for Medicare.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

### **23 CAR § 89-102. Applicability and scope.**

(a) Except as otherwise specifically provided in 23 CAR §§ 89-106, 89-115, 89-116, 89-119, and 89-124, this part shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in Arkansas on or after the effective date of this part; and

(2) All certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in Arkansas.

(b) This part shall not apply to a policy or contract of one (1) or more employers or labor organizations, of the trustees of a fund established by one (1) or more employers or labor organizations, or a combination thereof, for:

(1) Employees or former employees, or a combination thereof; or

(2) Members or former members, or a combination thereof, of the labor organizations.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

### **23 CAR § 89-103. Definitions.**

For purposes of this part:

(1) "1990 standardized Medicare supplement benefit plan", "1990 standardized benefit plan", or "1990 plan" means a group or individual policy of Medicare supplement insurance issued with an effective date of coverage on or after May 1, 1992, and with

an effective date of coverage prior to June 1, 2010, and includes Medicare supplement insurance policies and certificates renewed on or after that date that are not replaced by the issuer at the request of the insured;

(2) "2010 standardized Medicare supplement benefit plan", "2010 standardized benefit plan", or "2010 plan" means a group or individual policy of Medicare supplement insurance issued with an effective date of coverage on or after June 1, 2010;

(3) "Applicant" means:

(A) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(B) In the case of a group Medicare supplement policy, the proposed certificate holder;

(4) "Bankruptcy" means when a Medicare Advantage organization that is not an issuer has:

(A) Filed, or has had filed against it, a petition for declaration of bankruptcy; and

(B) Ceased doing business in the state;

(5) "Certificate" means any certificate delivered or issued for delivery in Arkansas under a group Medicare supplement policy;

(6) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer;

(7) "Commissioner" means the Insurance Commissioner of the State of Arkansas;

(8) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days;

(9)(A) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(i) A group health plan;

(ii) Health insurance coverage;

(iii) Part A or Part B of Title XVIII of the Social Security Act (Medicare);

(iv) Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928;

(v) Chapter 55 of Title 10, United States Code (CHAMPUS);

(vi) A medical care program of the United States Indian Health Service or of a tribal organization;

(vii) A state health benefits risk pool;

(viii) A health plan offered under Chapter 89 of Title 5, United States Code (Federal Employees Health Benefits Program);

(ix) A public health plan as defined in federal regulation; and

(x) A health benefit plan under Section 5(e) of the Peace Corps Act, 22 U.S.C. § 2504(e).

(B) "Creditable coverage" shall not include one (1) or more, or any combination of, the following:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Workers' compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics; and

(viii) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(C) "Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:

- (i) Limited scope dental or vision benefits;
- (ii) Benefits for:
  - (a) Long-term care;
  - (b) Nursing home care;
  - (c) Home health care;
  - (d) Community-based care; or
  - (e) Any combination thereof; and
- (iii) Such other similar, limited benefits as are specified in federal

regulations.

(D) "Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:

- (i) Coverage only for a specified disease or illness; and
- (ii) Hospital indemnity or other fixed indemnity insurance.

(E) "Creditable coverage" shall not include the following if it is offered as a separate policy, certificate, or contract of insurance:

- (i) Medicare supplemental health insurance as defined under Section 1882(g)(1) of the Social Security Act;
- (ii) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and
- (iii) Similar supplemental coverage provided to coverage under a group health plan;

(10) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. § 1002 (Employee Retirement Income Security Act);

(11) "Insolvency" means when an insurer is not possessed of assets at least equal to all liabilities and required reserves together with its total issued and outstanding capital stock, if a stock insurer, or the minimum surplus if a mutual or reciprocal insurer, required by the Arkansas Insurance Code to be maintained for the kind or kinds of insurance it is authorized to transact;

(12) "Issuer" includes:

- (A) Insurance companies;
- (B) Fraternal benefit societies;
- (C) Healthcare service plans;
- (D) Health maintenance organizations; and
- (E) Any other entity delivering or issuing for delivery in Arkansas Medicare supplement policies or certificates;

(13) "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended;

(14) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. § 1395w-28(b)(1), and includes:

(A) Coordinated care plans that provide healthcare services, including, but not limited to:

- (i) Health maintenance organization plans, with or without a point-of-service option;

- (ii) Plans offered by provider-sponsored organizations; and

- (iii) Preferred provider organization plans;

(B) Medical savings account plans coupled with a contribution into a Medicare Advantage plan medical savings account; and

(C) Medicare Advantage private fee-for-service plans;

(15)(A) "Medicare supplement policy" means a group or individual policy of accident and health insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. § 1395 et seq., or an issued policy under a demonstration project specified in 42 U.S.C. § 1395ss(g)(1), that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare.

(B) "Medicare supplement policy" does not include:

- (i) Medicare Advantage plans established under Medicare Part C;

(ii) Outpatient prescription drug plans established under Medicare Part D; or

(iii) Any healthcare prepayment plan that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act;

(16) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer;

(17) "Prestandardized Medicare supplement benefit plan", "prestandardized benefit plan", or "prestandardized plan" means a group or individual policy of Medicare supplement insurance issued prior to May 1, 1992; and

(18) "Secretary" means the Secretary of the United States Department of Health and Human Services.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** Part A of Title XVII of the Social Security Act is codified at 42 U.S.C. § 1395c et seq.

Part B of Title XVIII of the Social Security Act is codified at 42 U.S.C. § 1395j et seq.

Title XIX of the Social Security Act is codified at 42 U.S.C. § 1396 et seq.

Chapter 55 of Title 10, United States Code is codified at 10 U.S.C. § 1071 et seq.

Chapter 89 of Title 5, United States Code is codified at 5 U.S.C. § 8901 et seq.

Section 1882(g)(1) of the Social Security Act is codified at 42 U.S.C. § 1395ss(g)(1).

Section 1833(a)(1)(A) of the Social Security Act is codified at 42 U.S.C. § 1395l.

**23 CAR § 89-104. Policy definitions and terms.**

No policy or certificate may be advertised, solicited, or issued for delivery in Arkansas as a Medicare supplement policy or certificate unless such policy or certificate contains definitions or terms that conform to the requirements of this section:

(1)(A) "Accident", "accidental injury", or "accidental means" shall be defined to employ "result" language and shall not include words that establish an accidental means test or use words such as, "external, violent, visible wounds" or similar words of description or characterization.

(B) The definition shall not be more restrictive than the following:

Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force.

(C) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability, or similar law or motor vehicle no fault plan, unless prohibited by law;

(2) "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program;

(3) "Convalescent nursing home", "extended care facility", or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program;

(4) "Healthcare expenses" means, for purposes of 23 CAR § 89-116, expenses of health maintenance organizations associated with the delivery of healthcare services, which expenses are analogous to incurred losses of insurers;

(5) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by The Joint Commission, but not more restrictively than as defined in the Medicare program;

(6)(A) "Medicare" shall be defined in the policy and certificate.

(B) Medicare may be substantially defined as:

(i) "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended";

(ii) "Title I, Part I of Public Law 89-97, as enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof";  
or

(iii) Words of similar import;

(7) "Medicare-eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B to the extent recognized as reasonable and medically necessary by Medicare;

(8) "Physician" shall not be defined more restrictively than as defined in the Medicare program; and

(9)(A) "Sickness" shall not be defined to be more restrictive than the following:

Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force.

(B) The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 is codified at 42 U.S.C. § 1395 et seq.

**23 CAR § 89-105. Policy provisions.**

(a) Except for permitted preexisting condition clauses as described in 23 CAR § 89-106(b)(1), 23 CAR § 89-107(b)(1), and 23 CAR § 89-108(b)(1), no policy or certificate

may be advertised, solicited, or issued for delivery in the State of Arkansas as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(b) No Medicare supplement policy or certificate may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(c)(1) No Medicare supplement policy or certificate may include a policy fee or any other similar charge.

(2) Applicants cannot be required to pay any fee other than the approved premium.

(d) No Medicare supplement policy or certificate in force in the state shall contain benefits that duplicate benefits provided by Medicare.

(e)(1) Subject to 23 CAR § 89-106(b)(4), (5), and (7) and 23 CAR § 89-107(b)(4) and (5), a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006, shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(2) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(3) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(A) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

(B) Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**23 CAR § 89-106. Minimum benefit standards for prestandardized Medicare supplement benefit plan policies or certificates issued for delivery prior to May 1, 1992.**

(a)(1) No policy or certificate may be advertised, solicited, or issued for delivery in Arkansas as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards.

(2) These are minimum standards and do not preclude the inclusion of other provisions or benefits that are not inconsistent with these standards.

(b) **General standards.** The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this part:

(1)(A) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition.

(B) The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage;

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

(3)(A) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts.

(B) Premiums may be modified to correspond with such changes;

(4) A "noncancellable", "guaranteed renewable", or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(A) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(B) Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health;

(5)(A) Except as authorized by the Insurance Commissioner, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(B)(i) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subdivision (b)(5)(D) of this section, the issuer shall offer certificate holders an individual Medicare supplement policy.

(ii) The issuer shall offer the certificate holder at least the following choices:

*(a)* An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

*(b)* An individual Medicare supplement policy that provides only such benefits as are required to meet the minimum standards as defined in 23 CAR § 89-108(c).

(C) If membership in a group is terminated, the issuer shall:

(i) Offer the certificate holder the conversion opportunities as are described in subdivision (b)(5)(B) of this section; or

(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(D)(i) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination.

(ii) Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced;

(6)(A) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

(B) Receipt of Medicare Part D benefits will not be considered in determining a continuous loss; and

(7) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

(c) Minimum benefit standards:

(1) Coverage of Part A Medicare-eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare-eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A-eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount or, in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount of Medicare-eligible expenses under Part B regardless of hospital confinement, subject

to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible (one hundred dollars (\$100)); and

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 was enacted as Pub. L. No. 108-173.

**23 CAR § 89-107. Benefit standards for 1990 standardized Medicare supplement benefit policies or certificates issued or delivered on or after May 1, 1992, and with an effective date of coverage prior to June 1, 2010.**

(a)(1) The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in Arkansas on or after May 1, 1992, and with an effective date of coverage prior to June 1, 2010.

(2) No policy or certificate may be advertised, solicited, delivered, or issued for delivery in Arkansas as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(b) **General standards.** The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this part:

(1)(A) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition.

(B) The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was

recommended by or received from a physician within six (6) months before the effective date of coverage;

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

(3)(A) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts.

(B) Premiums may be modified to correspond with such changes;

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium;

(5)(A) Each Medicare supplement policy shall be guaranteed renewable.

(B) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(C) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(D) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subdivision (b)(5)(F) of this section, the issuer shall offer certificate holders an individual Medicare supplement policy that, at the option of the certificate holder, provides for:

(i) Continuation of the benefits contained in the group policy; or

(ii) Such benefits that as otherwise meet the requirements of this

subsection.

(E) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) Offer the certificate holder the conversion opportunity described in subdivision (b)(5)(D) of this section; or

(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(F)(i) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination.

(ii) Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(G) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subdivision (b)(5);

(6)(A) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to:

- (i) The duration of the policy benefit period, if any; or
- (ii) Payment of the maximum benefits.

(B) Receipt of Medicare Part D benefits will not be considered in determining a continuous loss;

(7)(A) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance.

(B) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate holder:

(i) Provides notice of loss of entitlement within ninety (90) days after the date of loss; and

(ii) Pays the premium attributable to the period, effective as of the date of termination of entitlement.

(C)(i) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by federal regulation, at the request of the policyholder if the policyholder is:

(a) Entitled to benefits under Section 226(b) of the Social Security Act; and

(b) Covered under a group health plan, as defined in Section 1862(b)(1)(A)(v) of the Social Security Act.

(ii) If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan the policy shall be automatically reinstated, effective as of the date of loss of coverage if the policyholder:

(a) Provides notice of loss of coverage within ninety (90) days after the date of loss; and

(b) Pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

(D) Reinstatement of such coverages as described in subdivisions (b)(7)(B) and (C) of this section:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii)(a) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension.

(b) If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended; and

(8) If issuer makes a written offer to the Medicare supplement policyholders or certificate holders of one (1) or more of its plans to exchange, during a specified period, from his or her 1990 standardized plan, as described in 23 CAR § 89-109, to a 2010 standardized plan, as described in 23 CAR § 89-110, the offer and subsequent exchange shall comply with the following requirements:

(A) The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage;

(B) An issuer may not apply new preexisting condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 standardized policy or certificate of the insured, but may apply preexisting condition limitations of no more than six (6) months to any added benefits contained in the new 2010 standardized policy or certificate not contained in the exchanged policy; and

(C) The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan, except where the offer or issue would be in violation of state or federal law.

**(c) Standards for basic (core) benefits common to benefit Plans A to J.**

(1) Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(A) Coverage of Part A Medicare-eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period;

(B) Coverage of Part A Medicare-eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(C)(i) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A-eligible expenses for hospitalization paid at the applicable prospective payment system rate or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days.

(ii) The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations; and

(E)(i) Coverage for the coinsurance amount or, in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount of Medicare-eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(ii) In all cases involving hospital outpatient department services paid under a prospective payment system, the issuer is required to pay the copayment amount established by the Centers for Medicare and Medicaid Services, which will be either:

(a) The amount established for the ambulatory payment classification (APC) group; or

(b) A provider-elected reduced copayment amount.

(d) **Standards for additional benefits.** The following additional benefits shall be included in Medicare supplement benefit Plans B through J only as provided by 23 CAR § 89-109:

(1) **Medicare Part A deductible.** Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;

(2) **Skilled nursing facility care.** Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A;

(3) **Medicare Part B deductible.** Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;

(4) **Eighty percent (80%) of the Medicare Part B excess charges.** Coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(5) **One hundred percent (100%) of the Medicare Part B excess charges.** Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(6) **Basic outpatient prescription drug benefit.**

(A) Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty-dollar calendar-year deductible, to a maximum of one thousand two hundred fifty dollars (\$1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(B) The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006;

(7) **Extended outpatient prescription drug benefit.**

(A) Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty-dollar calendar-year deductible to a maximum of three thousand dollars (\$3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(B) The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006;

(8) **Medically necessary emergency care in a foreign country.**

(A) Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a:

- (i) Calendar-year deductible of two hundred fifty dollars (\$250); and
- (ii) Lifetime maximum benefit of fifty thousand dollars (\$50,000).

(B) For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset;

**(9) Preventive medical care benefit.**

(A) Coverage for the following preventive health services not covered by Medicare:

(i) An annual clinical preventive medical history and physical examination that may include tests and services from subdivision (d)(9)(B) of this section and patient education to address preventive healthcare measures; and

(ii) Preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

(B)(i) Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars (\$120) annually under this benefit.

(ii) This benefit shall not include payment for any procedure covered by Medicare; and

**(10) At-home recovery benefit.**

(A) Coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

(B) For purposes of this benefit, the following definitions shall apply:

- (i) "Activities of daily living" include, but are not limited to:
  - (a) Bathing;
  - (b) Dressing;
  - (c) Personal hygiene;
  - (d) Transferring;
  - (e) Eating;
  - (f) Ambulating;
  - (g) Assistance with drugs that are normally self-administered;

and

- (h) Changing bandages or other dressings;

(ii) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide, or nurse:

- (a) Provided through a licensed home healthcare agency; or
- (b) Referred by a licensed referral agency or licensed nurses

registry;

(iii)(a) "Home" means any place used by the insured as a place of residence, provided that such place would qualify as a residence for home healthcare services covered by Medicare.

(b) A hospital or skilled nursing facility shall not be considered the insured's place of residence; and

(iv) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four-hour period of services provided by a care provider is one (1) visit.

**(C) Coverage requirements and limitations.**

(i) At-home recovery services provided must be primarily services that assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(a)(1) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician.

(2) The total number of at-home recovery visits shall not exceed the number of Medicare-approved home healthcare visits under a Medicare-approved home care plan of treatment;

(b) The actual charges for each visit up to a maximum reimbursement of forty dollars (\$40.00) per visit;

(c) One thousand six hundred dollars (\$1,600) per calendar year;

(d) Seven (7) visits in any one (1) week;

(e) Care furnished on a visiting basis in the insured's home;

(f) Services provided by a care provider as defined in this subsection;

(g) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded; and

(h) At-home recovery visits received:

(1) During the period the insured is receiving Medicare-approved home care services; or

(2) No more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(iv) Coverage is excluded for:

(a) Home care visits paid for by Medicare or other government programs; and

(b) Care provided by family members, unpaid volunteers, or providers who are not care providers.

(e) **Standards for Plans K and L.**

(1) Standardized Medicare supplement benefit Plan K shall consist of the following:

(A) Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the sixty-first through the ninetieth day in any Medicare benefit period;

(B) Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ninety-first through the one hundred fiftieth day in any Medicare benefit period;

(C)(i) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A-eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days.

(ii) The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) **Medicare Part A deductible.** Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subdivision (e)(1)(J) of this section;

(E) **Skilled nursing facility care.** Coverage for fifty percent (50%) of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subdivision (e)(1)(J) of this section;

(F) **Hospice care.** Coverage for fifty percent (50%) of cost sharing for all Part A Medicare-eligible expenses and respite care until the out-of-pocket limitation is met as described in subdivision (e)(1)(J) of this section;

(G) Coverage for fifty percent (50%), under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in subdivision (e)(1)(J) of this section;

(H) Except for coverage provided in subdivision (e)(1)(I) of this section, coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subdivision (e)(1)(J) of this section;

(I) Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(J) Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand dollars (\$4,000) in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the United States Department of Health and Human Services.

(2) Standardized Medicare supplement benefit Plan L shall consist of the following:

(A) The benefits described in subdivisions (e)(1)(A), (B), (C), and (I) of this section;

(B) The benefits described in subdivisions (e)(1)(D) – (H) of this section, but substituting seventy-five percent (75%) for fifty percent (50%); and

(C) The benefit described in subdivision (e)(1)(J) of this section, but substituting two thousand dollars (\$2,000) for four thousand dollars (\$4,000).

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 was enacted as Pub. L. No. 108-173.

Title XIX of the Social Security Act is codified at 42 U.S.C. § 1396 et seq.

Section 226(b) of the Social Security Act is codified at 42 U.S.C. § 426(b).

Section 1862(b)(1)(A)(v) of the Social Security Act is codified at 42 U.S.C. § 1395y(b)(1)(A)(v).

**23 CAR § 89-108. Benefit standards for 2010 standardized Medicare supplement benefit plan policies or certificates issued with an effective date of coverage for delivery on or after June 1, 2010.**

(a)(1) The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in Arkansas with an effective date of coverage on or after June 1, 2010.

(2) No policy or certificate may be advertised, solicited, delivered, or issued for delivery in Arkansas as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(3) No issuer may offer any 1990 standardized Medicare supplement benefit plan for sale on or after June 1, 2010.

(4) Benefit standards applicable to the Medicare supplement policies and certificates issued with an effective date of coverage before June 1, 2010, remain subject to the requirements of the Medicare Supplement Insurance Minimum Standards Act, Arkansas Code § 23-79-401 et seq.

(b) **General standards.** The following standards apply to Medicare supplemental policies and certificates and are in addition to all other requirements of this part:

(1)(A) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition.

(B) The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage;

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

(3)(A) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts.

(B) Premiums may be modified to correspond with such changes;

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium;

(5)(A) Each Medicare supplement policy shall be guaranteed renewable.

(B) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(C) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(D) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subdivision (b)(5)(F) of this section, the issuer shall offer certificate holders an individual Medicare supplement policy that, at the option of the certificate holder:

(i) Provides for continuation of the benefits contained in the group policy; or

(ii) Provides for benefits that otherwise meet the requirements of this subsection (b).

(E) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) Offer the certificate holder the conversion opportunity described in subdivision (b)(5)(D) of this section; or

(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(F)(i) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the

replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination.

(ii) Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced;

(6)(A) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(B) Receipt of Medicare Part D benefits will not be considered in determining a continuous loss; and

(7)(A) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

(B) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate holder:

(i) Provides notice of loss of entitlement within ninety (90) days after the date of loss; and

(ii) Pays the premium attributable to the period, effective as of the date of termination of entitlement.

(C)(i) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by federal regulation, at the request of the policyholder if the policyholder is:

(a) Entitled to benefits under Section 226(b) of the Social Security Act; and

(b) Covered under a group health plan, as defined in Section 1862(b)(1)(A)(v) of the Social Security Act.

(ii) If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated, effective as of the date of loss of coverage, if the policyholder:

(a) Provides notice of loss of coverage within ninety (90) days after the date of the loss; and

(b) Pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

(D) Reinstatement of coverages as described in subdivisions (b)(7)(B) and (C) of this section:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

**(c) Standards for basic (core) benefits common to Medicare supplement insurance benefit Plans A, B, C, D, F, F with High Deductible, G, M, and N.**

Every issuer of Medicare supplement insurance benefit plans shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare-eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period;

(2) Coverage of Part A Medicare-eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3)(A) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A-eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days.

(B) The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5)(A) Coverage for the coinsurance amount or, in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount of Medicare-eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(B) In all cases involving hospital outpatient department services paid under a prospective payment system, the issuer is required to pay the copayment amount established by the Centers for Medicare and Medicaid Services, which will be either the amount established for the ambulatory payment classification (APC) group or a provider-elected reduced copayment amount; and

(6) **Hospice care.** Coverage of cost sharing for all Part A Medicare-eligible hospice care and respite care expenses.

(d) **Standards for additional benefits.** The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, and N as provided by 23 CAR § 89-110:

(1) **Medicare Part A deductible.** Coverage for one hundred percent (100%) of the Medicare Part A inpatient hospital deductible amount per benefit period;

(2) **Medicare Part A deductible.** Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period;

(3) **Skilled nursing facility care.** Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A;

(4) **Medicare Part B deductible.** Coverage for one hundred percent (100%) of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;

(5) **One hundred percent (100%) of the Medicare Part B excess charges.** Coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge; and

(6) **Medically necessary emergency care in a foreign country.**

(A) Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a:

(i) Calendar-year deductible of two hundred fifty dollars (\$250); and

(ii) Lifetime maximum benefit of fifty thousand dollars (\$50,000).

(B) For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** Title XIX of the Social Security Act is codified at 42 U.S.C. § 1396 et seq.

Section 1862(b)(1)(A)(v) of the Social Security Act is codified at 42 U.S.C. § 1395y(b)(1)(A)(v).

**23 CAR § 89-109. Standard Medicare supplement benefit plans for 1990 standardized Medicare supplement benefit plan policies or certificates issued for delivery on or after May 1, 1992, and with an effective date of coverage prior to June 1, 2010.**

(a) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in 23 CAR § 89-107(c).

(b) No groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in Arkansas, except as may be permitted in subsection (g) of this section and in 23 CAR § 89-112.

(c)(1) Benefit plans shall:

(A) Be uniform in structure, language, designation, and format to the standard benefit Plans A through L listed in this section; and

(B) Conform to the definitions in 23 CAR § 89-103.

(2) Each benefit shall:

(A) Be structured in accordance with the format provided in 23 CAR § 89-107(c), (d), or (e); and

(B) List the benefits in the order shown in this section.

(3) For purposes of this section, "structure, language, and format" means style, arrangement, and overall content of a benefit.

(d) An issuer may use, in addition to the benefit plan designations required in subsection (c) of this section, other designations to the extent permitted by law.

(e) Makeup of benefit plans:

(1) Standardized Medicare supplement benefit Plan A shall be limited to the basic (core) benefits common to all benefit plans, as defined in 23 CAR § 89-107(c);

(2) Standardized Medicare supplement benefit Plan B shall include only the following:

(A) The core benefit as defined in 23 CAR § 89-107(c); plus

(B) The Medicare Part A deductible as defined in 23 CAR § 89-107(d)(1);

(3) Standardized Medicare supplement benefit Plan C shall include only the following:

(A) The core benefit as defined in 23 CAR § 89-107(c); plus

(B) The Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in 23 CAR § 89-107(d)(1), (2), (3), and (8), respectively;

(4) Standardized Medicare supplement benefit Plan D shall include only the following:

(A) The core benefit as defined in 23 CAR § 89-107(c); plus

(B) The Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in 23 CAR § 89-107(d)(1), (2), (8), and (10), respectively;

(5) Standardized Medicare supplement benefit Plan E shall include only the following:

(A) The core benefit as defined in 23 CAR § 89-107(c); plus

(B) The Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in 23 CAR § 89-107(d)(1), (2), (8), and (9), respectively;

(6) Standardized Medicare supplement benefit Plan F shall include only the following:

(A) The core benefit as defined in 23 CAR § 89-107(c); plus

(B) The Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges,

and medically necessary emergency care in a foreign country as defined in 23 CAR § 89-107(d)(1), (2), (3), (5), and (8), respectively;

(7)(A) Standardized Medicare supplement benefit high deductible Plan F shall include only the following: one hundred percent (100%) of covered expenses following the payment of the annual high-deductible Plan F deductible.

(B) The covered expenses include:

(i) The core benefit as defined in 23 CAR § 89-107(c); plus

(ii) The Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 23 CAR § 89-107(d)(1), (2), (3), (5), and (8), respectively.

(C) The annual high deductible Plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan F policy, and shall be in addition to any other specific benefit deductibles.

(D)(i) The annual high deductible Plan F deductible shall be one thousand five hundred dollars (\$1,500) for 1998 and 1999 and shall be based on the calendar year.

(ii) It shall be adjusted annually thereafter by the Secretary of the United States Department of Health and Human Services to reflect the change in the consumer price index for all urban consumers for the twelve-month period ending with August of the preceding year and rounded to the nearest multiple of ten dollars (\$10.00);

(8) Standardized Medicare supplement benefit Plan G shall include only the following:

(A) The core benefit as defined in 23 CAR § 89-107(c); plus

(B) The Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in 23 CAR § 89-107(d)(1), (2), (4), (8), and (10), respectively;

(9)(A) Standardized Medicare supplement benefit Plan H shall consist of only the following:

(i) The core benefit as defined in 23 CAR § 89-107(c); plus

(ii) The Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in 23 CAR § 89-107(d)(1), (2), (6), and (8), respectively.

(B) The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005;

(10)(A) Standardized Medicare supplement benefit Plan I shall consist of only the following:

(i) The core benefit as defined in 23 CAR § 89-107(c); plus

(ii) The Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in 23 CAR § 89-107(d)(1), (2), (5), (6), (8), and (10), respectively.

(B) The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005;

(11)(A) Standardized Medicare supplement benefit Plan J shall consist of only the following:

(i) The core benefit as defined in 23 CAR § 89-107(c); plus

(ii) The Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in 23 CAR § 89-107(d)(1), (2), (3), (5), (7), (8), (9), and (10), respectively.

(B) The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005; and

(12)(A) Standardized Medicare supplement benefit high deductible Plan J shall consist of only the following: one hundred percent (100%) of covered expenses following the payment of the annual high deductible Plan J deductible.

(B) The covered expenses include:

(i) The core benefit as defined in 23 CAR § 89-107(c); plus

(ii) The Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit, and at-home recovery benefit as defined in 23 CAR § 89-107(d)(1), (2), (3), (5), (7), (8), (9), and (10), respectively.

(C) The annual high deductible Plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan J policy and shall be in addition to any other specific benefit deductibles.

(D)(i) The annual deductible shall be:

(a) One thousand five hundred dollars (\$1,500) for 1998 and 1999; and

(b) Based on a calendar year.

(ii) It shall be adjusted annually thereafter by the Secretary of the United States Department of Health and Human Services to reflect the change in the consumer price index for all urban consumers for the twelve-month period ending with August of the preceding year and rounded to the nearest multiple of ten dollars (\$10.00).

(E) The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(f) Makeup of two (2) Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA):

(1) Standardized Medicare supplement benefit Plan K shall consist of only those benefits described in 23 CAR § 89-107(e)(1); and

(2) Standardized Medicare supplement benefit Plan L shall consist of only those benefits described in 23 CAR § 89-107(e)(2).

**(g) New or innovative benefits.**

(1) An issuer may, with the prior approval of the Insurance Commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards.

(2) The new or innovative benefits may include benefits that are:

(A) Appropriate to Medicare supplement insurance;

(B) New or innovative;

(C) Not otherwise available;

(D) Cost-effective; and

(E) Offered in a manner that is consistent with the goal of simplification of Medicare supplement policies.

(3) After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 was enacted as Pub. L. No. 108-173.

**23 CAR § 89-110. Standard Medicare supplement benefit plans for 2010 standardized Medicare supplement benefit plan policies or certificates issued for delivery with an effective date of coverage on or after June 1, 2010.**

(a)(1) The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in Arkansas with an effective date of coverage on or after June 1, 2010.

(2) No policy or certificate may be advertised, solicited, delivered, or issued for delivery in Arkansas as a Medicare supplement policy or certificate unless it complies with these benefit plan standards.

(3) Benefit plan standards applicable to Medicare supplement policies and certificates issued with an effective date of coverage before June 1, 2010, remain subject to the requirements of the Medicare Supplement Insurance Minimum Standards Act, Arkansas Code § 23-79-401 et seq.

(b)(1) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as defined in 23 CAR § 89-108(c).

(2) If an issuer makes available any of the additional benefits described in 23 CAR § 89-108(d) or offers standardized benefit Plans K or L (as described in subdivisions (f)(8) and (f)(9) of this section), then the issuer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic (core) benefits as described in subdivision (b)(1) of this section, a policy form or certificate form containing either:

(A) Standardized benefit Plan C (as described in subdivision (f)(3) of this section); or

(B) Standardized benefit Plan F (as described in subdivision (f)(5) of this section).

(c) No groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in Arkansas, except as may be permitted in subsection (g) of this section and 23 CAR § 89-112.

(d)(1) Benefit plans shall:

(A) Be uniform in structure, language, designation, and format to the standard benefit plans listed in this subsection; and

(B) Conform to the definitions in 23 CAR § 89-103.

(2) Each benefit shall:

(A) Be structured in accordance with the format provided in 23 CAR § 89-108(c) and (d) or, in the case of Plans K or L, in subdivision (f)(8) or (f)(9) of this section; and

(B) List the benefits in the order shown.

(3) For purposes of this section, "structure, language, and format" means style, arrangement, and overall content of a benefit.

(e) In addition to the benefit plan designations required in subsection (d) of this section, an issuer may use other designations to the extent permitted by law.

(f) Makeup of 2010 standardized benefit plans:

(1) Standardized Medicare supplement benefit Plan A shall include only the following: the basic (core) benefits as defined in 23 CAR § 89-108(c);

(2) Standardized Medicare supplement benefit Plan B shall include only the following:

(A) The basic (core) benefit as defined in 23 CAR § 89-108(c); plus

(B) One hundred percent (100%) of the Medicare Part A deductible as defined in 23 CAR § 89-108(d)(1);

(3) Standardized Medicare supplement benefit Plan C shall include only the following:

(A) The basic (core) benefit as defined in 23 CAR § 89-108(c); plus

(B) One hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in 23 CAR § 89-108(d)(1), (3), (4), and (6), respectively;

(4) Standardized Medicare supplement benefit Plan D shall include only the following:

(A) The basic (core) benefit (as defined in 23 CAR § 89-108(c)); plus

(B) One hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in an foreign country as defined in 23 CAR § 89-108(d)(1), (3), and (6), respectively;

(5) Standardized Medicare supplement Standard Plan F shall include only the following:

(A) The basic (core) benefit as defined in 23 CAR § 89-108(c); plus

(B) One hundred percent (100%) of the Medicare Part A deductible, the skilled nursing facility care, one hundred percent (100%) of the Medicare Part B

deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 23 CAR § 89-108(d)(1), (3), (4), (5), and (6), respectively;

(6)(A) Standardized Medicare supplement Plan F with High Deductible shall include only the following: one hundred percent (100%) of covered expenses following the payment of the annual deductible set forth in subdivision (f)(6)(C) of this section.

(B) The basic (core) benefit as defined in 23 CAR § 89-108(c), plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 23 CAR § 89-108(d)(1), (3), (4), (5), and (6), respectively.

(C)(i) The annual deductible in Plan F with High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by Standard Plan F and shall be in addition to any other specific benefit deductibles.

(ii) The basis for the deductible shall be one thousand five hundred dollars (\$1,500) and shall be adjusted annually from 1999 by the Secretary of the United States Department of Health and Human Services to reflect the change in the consumer price index for all urban consumers for the twelve-month period ending with August of the preceding year and rounded to the nearest multiple of ten dollars (\$10.00);

(7)(A) Standardized Medicare supplement benefit Plan G shall include only the following:

(i) The basic (core) benefit as defined in 23 CAR § 89-108(c); plus

(ii) One hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 23 CAR § 89-108(d)(1), (3), (5), and (6), respectively.

(B) Effective January 1, 2020, the standardized benefit plans described in 23 CAR § 89-111(b)(4) (Redesignated Plan G with High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020;

(8) Standardized Medicare supplement Plan K is mandated by The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and shall include only the following:

(A) **Part A hospital coinsurance, sixty-first through ninetieth days.** Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the sixty-first through the ninetieth day in any Medicare benefit period;

(B) **Part A hospital coinsurance, ninety-first through one hundred fiftieth days.** Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ninety-first through the one hundred fiftieth day in any Medicare benefit period;

(C) **Part A hospitalization after one hundred fifty (150) days.**  
(i) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days.

(ii) The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) **Medicare Part A deductible.** Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subdivision (f)(8)(J) of this section;

(E) **Skilled nursing facility care.** Coverage for fifty percent (50%) of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care

eligible under Medicare Part A until the out-of-pocket limitation is met as described in subdivision (f)(8)(J) of this section;

(F) **Hospice care.** Coverage for fifty percent (50%) of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subdivision (f)(8)(J) of this section;

(G) **Blood.** Coverage for fifty percent (50%), under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in subdivision (f)(8)(J) of this section;

(H) **Part B cost sharing.** Except for coverage provided in subdivision (f)(8)(I) of this section, coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subdivision (f)(8)(J) of this section;

(I) **Part B preventive services.** Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(J) **Cost sharing after out-of-pocket limits.** Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand dollars (\$4,000) in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the United States Department of Health and Human Services;

(9) Standardized Medicare supplement Plan L is mandated by The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and shall include only the following:

(A) The benefits described in subdivisions (f)(8)(A), (B), (C), and (I) of this section;

(B) The benefit described in subdivisions (f)(8)(D) – (H) of this section, but substituting seventy-five percent (75%) for fifty percent (50%); and

(C) The benefit described in subdivision (f)(8)(J) of this section, but substituting two thousand dollars (\$2,000) for four thousand dollars (\$4,000);

(10) Standardized Medicare supplement Plan M shall include only the following:

(A) The basic (core) benefit as defined in 23 CAR § 89-108(c); plus

(B) Fifty percent (50%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in 23 CAR § 89-108(d)(2), (3), and (6), respectively; and

(11) Standardized Medicare supplement Plan N shall include only the following:

(A) The basic (core) benefit as defined in 23 CAR § 89-108(c); plus

(B) One hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in 23 CAR § 89-108(d)(1), (3), and (6), respectively, with copayments in the following amounts:

(i) The lesser of twenty dollars (\$20.00) or the Medicare Part B coinsurance or copayment for each covered healthcare provider office visit (including visits to medical specialists); and

(ii)(a) The lesser of fifty dollars (\$50.00) or the Medicare Part B coinsurance or copayment for each covered emergency room visit.

(b) However, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

**(g) New or innovative benefits.**

(1) An issuer may, with the prior approval of the Insurance Commissioner, offer policies or certificates with new or innovative benefits in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards.

(2) The new or innovative benefits shall include only benefits that are:

(A) Appropriate to Medicare supplement insurance;

(B) New or innovative;

- (C) Not otherwise available; and
- (D) Cost-effective.

(3) Approval of new or innovative benefits must not adversely impact the goal of Medicare supplement simplification.

(4) New or innovative benefits shall not include an outpatient prescription drug benefit.

(5) New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**23 CAR § 89-111. Standard Medicare supplement benefit plans for 2020 standardized Medicare supplement benefit plan policies or certificates issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020.**

(a)(1) The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards, which are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020.

(2) No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020.

(3) All policies must comply with the following benefit standards.

(4) Benefit plan standards applicable to Medicare supplement policies and certificates issued with an effective date of coverage before January 1, 2020, remain subject to the requirements of the Medicare Supplement Insurance Minimum Standards Act, Arkansas Code § 23-79-401 et seq.

(b) **Benefit requirements.** The standards and requirements of 23 CAR § 89-110 shall apply to all Medicare supplement policies or certificates delivered or issued for

delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

(1) Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in 23 CAR § 89-110(f)(3) but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible;

(2) Standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in 23 CAR § 89-110(f)(5) but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible;

(3) Standardized Medicare supplement benefit Plans C, F, and F with High Deductible may not be offered to individuals newly eligible for Medicare on or after January 1, 2020;

(4)(A) Standardized Medicare supplement benefit Plan F with High Deductible is redesignated as Plan G with High Deductible and shall provide the benefits contained in 23 CAR § 89-110(f)(6) but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible.

(B) Provided further that the Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket expense in meeting the annual high deductible; and

(5) The reference to Plans C or F contained in 23 CAR § 89-110(b)(2) is deemed a reference to Plans D or G for purposes of this section.

(c) **Applicability to certain individuals.** This section applies to only individuals that are newly eligible for Medicare on or after January 1, 2020, by reason of:

(1) Attaining age sixty-five (65) on or after January 1, 2020; or

(2) Entitlement to benefits under Part A pursuant to Section 226(b) or 226A of the Social Security Act or who are deemed to be eligible for benefits under Section 226(a) of the Social Security Act on or after January 1, 2020.

(d) **Guaranteed issue for eligible persons.** For purposes of 23 CAR § 89-114(e), in the case of any individual newly eligible for Medicare on or after January 1,

2020, any reference to a Medicare supplement policy C or F (including F with High Deductible) shall be deemed to be a reference to Medicare supplement policy D or G (including G with High Deductible), respectively, that meet the requirements of subsection (b) of this section.

(e) **Applicability to waived states.** In the case of a state described in Section 1882(p)(6) of the Social Security Act (“waivered” alternative simplification states), the Medicare Access and CHIP Reauthorization Act of 2015 prohibits the coverage of the Medicare Part B deductible for any Medicare supplement policy sold or issued to an individual that is newly eligible for Medicare on or after January 1, 2020.

(f) **Offer of redesignated plans to individuals other than newly eligible.** On or after January 1, 2020, the standardized benefit plans described in subdivision (b)(4) of this section may be offered to any individual who was eligible for Medicare prior to January 1, 2020, in addition to the standardized plans described in 23 CAR § 89-110(f).

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** The Medicare Access and CHIP Reauthorization Act of 2015 was enacted as Pub. L. No. 114-10.

Section 226(b) of the Social Security Act is codified at 42 U.S.C. § 426(b).

Section 226A of the Social Security Act is codified at 42 U.S.C. § 426-1.

Section 226(a) of the Social Security Act is codified at 42 U.S.C. § 426(a).

Section 1882(p)(6) of the Social Security Act is codified at 42 U.S.C. § 1395ss(p)(6).

**23 CAR § 89-112. Medicare Select policies and certificates.**

(a)(1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(b) For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers;

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers;

(3) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate;

(4) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions;

(5) "Network provider" means a provider of health care, or a group of providers of health care, that has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy;

(6) "Restricted network provision" means any provision that conditions the payment of benefits, in whole or in part, on the use of network providers; and

(7) "Service area" means the geographic area approved by the Insurance Commissioner within which an issuer is authorized to offer a Medicare Select policy.

(c) The commissioner may authorize an issuer to offer a Medicare Select policy or certificate pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this part.

(d) A Medicare Select issuer shall not issue a Medicare Select policy or certificate in Arkansas until its plan of operation has been approved by the commissioner.

(e)(1) A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner.

(2) The plan of operation shall contain at least the following information:

(A) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(i)(a) The services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care.

(b) The hours of operation and availability of after-hour care shall reflect usual practice in the local area.

(c) Geographic availability shall reflect the usual travel times within the community;

(ii) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either to:

(a) Deliver adequately all services that are subject to a restricted network provision; or

(b) Make appropriate referrals;

(iii) There are written agreements with network providers describing specific responsibilities;

(iv) Emergency care is available twenty-four (24) hours per day and seven (7) days per week; and

(v)(a) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate.

(b) This subdivision (e)(2)(A)(v) shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate;

(B) A statement or map providing a clear description of the service area;

(C) A description of the grievance procedure to be utilized;

(D) A description of the quality assurance program, including the:

(i) Formal organizational structure;

(ii) Written criteria for selection, retention, and removal of network providers; and

(iii) Procedures for evaluating quality of care provided by network providers and the process to initiate corrective action when warranted;

(E) A list and description, by specialty, of the network providers;

(F) Copies of the written information proposed to be used by the issuer to comply with subsection (i) of this section; and

(G) Any other information requested by the commissioner.

(f)(1)(A) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing such changes.

(B) Such changes shall be considered approved by the commissioner after thirty (30) days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.

(g) A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition; and

(2) It is not reasonable to obtain such services through a network provider.

(h) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(i)(1) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant.

(2) This disclosure shall include at least the following:

(A) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with other:

(i) Medicare supplement policies or certificates offered by the issuer;

and

(ii) Medicare Select policies or certificates;

(B) A description, including address, phone number, and hours of operation, of the network providers including:

(i) Primary care physicians;

(ii) Specialty physicians;

(iii) Hospitals; and

(iv) Other providers;

(C)(i) A description of the restricted network provisions including payments for coinsurance and deductibles when providers other than network providers are utilized.

(ii) Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in Plans K and L;

(D) A description of coverage for emergency and urgently needed care and other out-of-service area coverage;

(E) A description of limitations on referrals to restricted network providers and to other providers;

(F) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer; and

(G) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

(j) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant:

(1) Has received the information provided pursuant to subsection (i) of this section; and

(2) Understands the restrictions of the Medicare Select policy or certificate.

(k)(1) A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers.

(2) Such procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(3) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(4) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(5) Grievances shall be:

(A) Considered in a timely manner; and

(B) Transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.

(6) If a grievance is found to be valid, corrective action shall be taken promptly.

(7) All concerned parties shall be notified about the results of a grievance.

(8)(A) The issuer shall report no later than each March 31 to the commissioner regarding its grievance procedure.

(B) The report shall:

(i) Be in a format prescribed by the commissioner; and

(ii) Contain the number of grievances filed in the past year and a summary of the subject, nature, and resolution of such grievances.

(l) At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(m)(1)(A) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer that:

(i) Has comparable or lesser benefits; and

(ii) Does not contain a restricted network provision.

(B) The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(2)(A) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced.

(B) For the purposes of this subdivision (m)(2), a "significant benefit" means coverage for:

- (i) The Medicare Part A deductible;
- (ii) At-home recovery services; or
- (iii) Part B excess charges.

(n)(1) Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of the United States Department of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select program to be reauthorized under law or its substantial amendment.

(2)(A) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer that:

- (i) Has comparable or lesser benefits; and
- (ii) Does not contain a restricted network provision.

(B) The issuer shall make such policies and certificates available without requiring evidence of insurability.

(3)(A) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced.

(B) For the purposes of this subdivision (n)(3), a "significant benefit" means coverage for:

- (i) The Medicare Part A deductible;
- (ii) Prescription drugs;
- (iii) At-home recovery services; or
- (iv) Part B excess charges.

(o) A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select program.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**23 CAR § 89-113. Open enrollment.**

(a)(1) An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Arkansas nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both:

- (A) Sixty-five (65) years of age or older; and
- (B) Enrolled for benefits under Medicare Part B.

(2) Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(b)(1) If an applicant qualifies under subsection (a) of this section, submits an application during the time period referenced in subsection (a) of this section, and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits on a preexisting condition.

(2)(A) If the applicant qualifies under subsection (a) of this section, submits an application during the time period referenced in subsection (a) of this section, and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of preexisting condition

exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date.

(B) The Secretary of the United States Department of Health and Human Services shall specify the manner of the reduction under this subsection.

(c) Except as provided in subsection (b) of this section and 23 CAR §§ 89-114 and 89-125, subsection (a) of this section shall not be construed as preventing the exclusion of benefits under a policy during the first six (6) months based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.

(d) On the application immediately above the first health question, the following statement should be inserted: "Under Open Enrollment, health questions are not required to be answered."

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**23 CAR § 89-114. Guaranteed issue for eligible persons.**

**(a) Guaranteed issue.**

(1) Eligible persons are those individuals described in subsection (b) of this section who:

(A) Seek to enroll under the policy during the period specified in subsection (c) of this section; and

(B) Submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer:

(A) Shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (e) of this section that is offered and is available for issuance to new enrollees by the issuer;

(B) Shall not discriminate in the pricing of such a Medicare supplement policy because of:

(i) Health status;

- (ii) Claims experience;
- (iii) Receipt of health care; or
- (iv) Medical condition; and

(C) Shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(b) **Eligible persons.** An eligible person is an individual described in any of the following subdivisions:

(1) The individual:

(A) Is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare and the plan terminates, or the plan ceases to provide some or all such supplemental health benefits to the individual;

(B) Is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide some or all health benefits to the individual; or

(C) Leaves the plan, whether the plan is primary or secondary with Medicare;

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare and any of the following circumstances apply, or the individual is sixty-five (65) years of age or older, 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 below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

(A) The certification of the organization or plan has been terminated; or

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary of the United States Department of Health and Human Services, but

not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the Secretary of the Department of Health and Human Services, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization or agent, producer, or other entity acting on the organization's behalf materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets such other exceptional conditions as the Secretary of the United States Department of Health and Human Services may provide;

(3)(A) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (healthcare prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under subdivision (b)(2) of this section;

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A) Of the insolvency of the issuer or bankruptcy of the non-issuer organization or other involuntary termination of coverage or enrollment under the policy;

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer or an agent or other entity acting on the issuer's behalf materially misrepresented the policy's provisions in marketing the policy to the individual;

(5)(A) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a Medicare Select policy; and

(B) The subsequent enrollment under subdivision (b)(5)(A) of this section is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act);

(6) The individual, upon first becoming eligible for benefits under Part A of Medicare at age sixty-five (65), enrolls in a Medicare Advantage plan under Part C of Medicare or with a PACE 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; or

(7) The individual:

(A) Enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs; and

(B) Terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in subdivision (e)(4) of this section.

**(c) Guaranteed issue time periods.**

(1) In the case of an individual described in subdivision (b)(1) of this section, the guaranteed issue period:

(A) Begins on the later of:

(i) The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such termination or cessation); or

(ii) The date that the applicable coverage terminates or ceases; and

(B) Ends sixty-three (63) days thereafter.

(2) In the case of an individual described in subdivision (b)(2), (b)(3), (b)(5), or (b)(6) of this section whose enrollment is terminated involuntarily, the guaranteed issue period:

(A) Begins on the date that the individual receives a notice of termination; and

(B) Ends sixty-three (63) days after the date the applicable coverage is terminated.

(3) In the case of an individual described in subdivision (b)(4)(A) of this section, the guaranteed issue period:

(A) Begins on the earlier of:

(i) 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; and

(ii) The date that the applicable coverage is terminated; and

(B) Ends on the date that is sixty-three (63) days after the date the coverage is terminated.

(4) In the case of an individual described in subdivision (b)(2), (b)(4)(B), (b)(4)(C), (b)(5), or (b)(6) of this section who disenrolls voluntarily, the guaranteed issue period:

(A) Begins on the date that is sixty (60) days before the effective date of the disenrollment; and

(B) Ends on the date that is sixty-three (63) days after the effective date.

(5) In the case of an individual described in subdivision (b)(7) of this section, the guaranteed issue period:

(A) Begins on the date the individual receives a notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day period immediately preceding the initial Part D enrollment period; and

(B) Ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D.

(6) In the case of an individual described in subsection (b) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period:

(A) Begins on the effective date of disenrollment; and

(B) Ends on the date that is sixty-three (63) days after the effective date.

(d) Extended Medigap access for interrupted trial periods.

(1) In the case of an individual described in subdivision (b)(5) of this section (or deemed to be so described, pursuant to this subdivision (d)(1)) whose enrollment with an organization or provider described in subdivision (b)(5) of this section is involuntarily terminated within the first twelve (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 subdivision (b)(5) of this section.

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

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

(e) **Products to which eligible persons are entitled.** The Medicare supplement policy to which eligible persons are entitled under:

(1) Subdivisions (b)(1), (2), (3), and (4) of this section is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with High Deductible), K, or L offered by any issuer;

(2)(A) Subject to subdivision (e)(2)(B) of this section, subdivision (b)(5) of this section is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in subdivision (e)(1) of this section.

(B) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this subdivision (e)(2)(B) is:

(i) The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(ii) At the election of the policyholder, an A, B, C, F (including F with High Deductible), K, or L policy that is offered by any issuer;

(3) Subdivision (b)(6) of this section shall include any Medicare supplement policy offered by any issuer; and

(4) Subdivision (b)(7) of this section is a Medicare supplement policy that:

(A) Has a benefit package classified as Plan A, B, C, F (including F with High Deductible), K, or L; and

(B) Is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

**(f) Notification provisions.**

(1)(A) At the time of an event described in subsection (b) of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of:

(i) His or her rights under this section; and

(ii) The obligations of issuers of Medicare supplement policies under subsection (a) of this section.

(B) Such notice shall be communicated contemporaneously with the notification of termination.

(2)(A) At the time of an event described in subsection (b) of this section because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of:

(i) His or her rights under this section; and

(ii) The obligations of issuers of Medicare supplement policies under subsection (a) of this section.

(B) Such notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** Section 1894 of the Social Security Act is codified at 42 U.S.C. § 1395eee.

Section 1851(g)(3)(B) of the Social Security Act is codified at 42 U.S.C. § 1395w-21.

Section 1856 of the Social Security Act is codified at 42 U.S.C. § 1395w-26.

Section 1876 of the Social Security Act is codified at 42 U.S.C. § 1395mm.

Section 1882(v)(2)(B) of the Social Security Act is codified at 42 U.S.C. § 1395ss.

**23 CAR § 89-115. Standards for claims payment.**

(a) An issuer shall comply with Section 1882(c)(3) of the Social Security Act (as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100-203) by:

(1) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) Paying the participating physician or supplier directly;

(4) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number, and a central mailing address to which notices from a Medicare carrier may be sent;

(5) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) Providing to the Secretary of the United States Department of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

(b) Compliance with the requirements set forth in subsection (a) of this section shall be certified on the Medicare supplement insurance experience reporting form.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** Section 1882(c)(3) of the Social Security Act is codified at 42 U.S.C. § 1395ss(c)(3).

**23 CAR § 89-116. Loss ratio standards and refund or credit of premium.**

**(a) Loss ratio standards.**

(1)(A) A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form:

(i) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or

(ii) At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies;

(B)(i) Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices.

(ii) Incurred healthcare expenses where coverage is provided by a health maintenance organization shall not include:

*(a)* Home office and overhead costs;

*(b)* Advertising costs;

*(c)* Commissions and other acquisition costs;

*(d)* Taxes;

*(e)* Capital costs;

*(f)* Administrative costs; and

*(g)* Claims processing costs.

(2)(A) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date.

(B) Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For purposes of applying subdivision (a)(1) of this section and 23 CAR § 89-117(d)(3) only, policies issued as a result of solicitations of individuals through the mail or by mass media advertising, including both print and broadcast advertising, shall be deemed to be individual policies.

(4) For policies issued prior to May 1, 1992, expected claims in relation to premiums shall meet the:

(A) Originally filed anticipated loss ratio when combined with the actual experience since inception;

(B) Appropriate loss ratio requirement from subdivision (a)(1)(A) of this section when combined with actual experience beginning with January 1, 1996, to date; and

(C) Appropriate loss ratio requirement from subdivision (a)(1)(A)(i) and (ii) of this section over the entire future period for which the rates are computed to provide coverage.

**(b) Refund or credit calculation.**

(1) An issuer shall collect and file with the Insurance Commissioner by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(2)(A) If, on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required.

(B) The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan.

(C) For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3)(A) For the purposes of this section, for policies or certificates issued prior to May 1, 1992, the issuer shall make the refund or credit calculation separately for all individual policies including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after August 1, 1996.

(B) The first report shall be due by May 31, 1998.

(4)(A) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level.

(B) The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of the United States Department of Health and Human Services, but in no event shall it be less than the average rate of interest for thirteen-week United States Department of the Treasury notes.

(C) A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

**(c) Annual filing of premium rates.**

(1)(A) An issuer of Medicare supplement policies and certificates issued before or after the effective date of this part, May 1, 1992, in Arkansas shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

(B) The supporting documentation shall also demonstrate, in accordance with actuarial standards of practice using reasonable assumptions, that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed.

(C) Such demonstration shall exclude active life reserves.

(D) An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(2) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in Arkansas shall file with the commissioner, in accordance with the applicable filing procedures of this state:

(A)(i)(a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates.

(b) The supporting documents as necessary to justify the adjustment shall accompany the filing.

(ii)(a) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates.

(b) No premium adjustment which would modify the loss ratio experience under the policy, other than the adjustments described herein, shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(iii) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this section; and

(B)(i) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare.

(ii) The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(d)(1) The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or

certificate form issued before or after the effective date of this part if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard.

(2) The determination of compliance is made without consideration of any refund or credit for such reporting period.

(3) Public notice of such hearing shall be furnished in a manner deemed appropriate by the commissioner.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**23 CAR § 89-117. Filing and approval of policies and certificates and premium rates.**

(a) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the Insurance Commissioner in accordance with filing requirements and procedures prescribed by the Insurance Commissioner.

(b) An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

(c) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the Insurance Commissioner in accordance with the filing requirements and procedures prescribed by the Insurance Commissioner.

(d)(1) Except as provided in subdivision (d)(2) of this section, an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard supplement benefit plan.

(2) An issuer may offer, with the approval of the Insurance Commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

- (A) The inclusion of new or innovative benefits;
- (B) The addition of either direct response or agent/producer marketing methods;
- (C) The addition of either guaranteed issue or underwritten coverage; and
- (D) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this subsection, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

(4) The filing of 2010 standardized plans policy forms to take the place of 1990 standardized plans policy forms prior to the actual withdrawal of the 1990 standardized plans policy forms is permitted.

(e)(1)(A)(i) Except as provided in subdivision (e)(1)(B) of this section, an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this part that has been approved by the Insurance Commissioner.

(ii) A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

(B)(i) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the Insurance Commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate.

(ii) After receipt of the notice by the Insurance Commissioner, the issuer shall no longer offer for sale the policy form or certificate form in Arkansas.

(C)(i) An issuer that discontinues the availability of a policy form or certificate form pursuant to subdivision (e)(1)(B) of this section 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 Insurance Commissioner of the discontinuance.

(ii) The period of discontinuance may be reduced if the Insurance Commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under subdivision (e)(1) of this section unless the issuer complies with the following requirements:

(A) The issuer provides an actuarial memorandum, in a form and manner prescribed by the Insurance Commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; and

(B)(i) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change.

(ii) The Insurance Commissioner may approve a change to the differential that is in the public interest.

(f)(1) Except as provided in subdivision (f)(2) of this section, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 23 CAR § 89-116.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 was enacted as Pub. L. No. 108-173.

**23 CAR § 89-118. Permitted compensation arrangements.**

(a) An issuer or other entity may provide commission or other compensation to an agent or producer or other representative for the sale of a Medicare supplement policy or certificate only if the first-year commission or other first-year compensation is no more than two hundred percent (200%) of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(b) The commission or other compensation provided in subsequent (renewal) years must be:

- (1) The same as that provided in the second year or period; and
- (2) Provided for no fewer than five (5) renewal years.

(c) No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

(d) For purposes of this section, "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale of or renewal of the policy or certificate, including, but not limited to:

- (1) Bonuses;
- (2) Gifts;
- (3) Prizes;
- (4) Awards; and
- (5) Finders' fees.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

### **23 CAR § 89-119. Required disclosure provisions.**

#### **(a) General rules.**

(1)(A) Medicare supplement policies and certificates shall include a renewal or continuation provision.

(B) The language or specifications of the provision shall be consistent with the type of contract issued.

(C) The provision shall:

- (i) Be appropriately captioned;
- (ii) Appear on the first page of the policy; and
- (iii) Include any reservation by the issuer of the right to change

premiums.

(2)(A) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured.

(B) After the date of policy or certificate issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law.

(C) Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as:

- (A) "Usual and customary";
- (B) "Reasonable and customary"; or
- (C) Words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall:

- (A) Appear as a separate paragraph of the policy; and
- (B) Be labeled as "Preexisting Condition Limitations".

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6)(A)(i) Issuers of accident and health policies or certificates that provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person or persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Centers for Medicare & Medicaid Services and in a type size no smaller than 12-point type.

(ii) Delivery of the guide shall be made whether or not the policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this part.

(iii) Except in the case of direct response issuers, delivery of the guide shall be made to the applicant at the time of application, and acknowledgement of receipt of the guide shall be obtained by the issuer.

(iv) Direct response issuers shall deliver the guide to the applicant upon request, but not later than at the time the policy is delivered.

(B) For the purposes of this section, "form" means the:

- (i) Language;
- (ii) Format;
- (iii) Type size;
- (iv) Type proportional spacing;
- (v) Bold character; and
- (vi) Line spacing.

**(b) Notice requirements.**

(1)(A) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its

policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the Insurance Commissioner.

(B) The notice shall:

(i) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

(ii) Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

**(c) Medicare Prescription Drug, Improvement, and Modernization Act of 2003 notice requirements.** Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

**(d) Outline of coverage requirements for Medicare supplement policies.**

(1) Issuers shall provide an outline of coverage to all applicants at the time an application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant.

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall:

(A) Accompany such policy or certificate when it is delivered; and

(B) Contain the following statement, in no less than 12-point type, immediately above the company name:

NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not

been issued.

(3)(A) The outline of coverage provided to applicants pursuant to this section consists of four (4) parts:

- (i) A cover page;
- (ii) Premium information;
- (iii) Disclosure pages; and
- (iv) Charts displaying the features of each benefit plan offered by the

issuer.

(B) The outline of coverage shall be in the language and format prescribed below in no less than 12-point type.

(C) All plans shall be shown on the cover page, and the plan or plans that are offered by the issuer shall be prominently identified.

(D) Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed.

(E) The premium and mode shall be stated for all plans that are offered to the prospective applicant.

(F) All possible premiums for the prospective applicant shall be illustrated.

(4) The items in Appendix D shall be included in the outline of coverage in the order prescribed.

**(e) Notice regarding policies or certificates that are not Medicare supplement policies.**

(1)(A) Any accident and health insurance policy or certificate, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. § 1395 et seq.), disability income policy, or other policy identified in 23 CAR § 89-102(b), issued for delivery in Arkansas to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate.

(B) The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds.

(C) The notice shall:

- (i) Be in no less than 12-point type; and
- (ii) Contain the following language:

\*THIS [POLICY OR CERTIFICATE] IS NOT A  
MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If  
you are eligible for Medicare, review the Choosing a  
Medigap Policy: a Guide to Health Insurance for  
People with Medicare, available from the company.

(2)(A) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in subdivision (d)(1) of this section shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare.

(B) The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 was enacted as Pub. L. No. 108-173.

Section 1876 of the federal Social Security Act is codified at 42 U.S.C. § 1395mm.

**23 CAR § 89-120. Requirements for application forms and replacement coverage.**

(a)(1)(A) Application forms shall include the following questions designed to elicit information as to whether:

(i) As of the date of the application, the applicant has another Medicare supplement, Medicare Advantage, Medicaid coverage, or another accident and health insurance policy or certificate in force; or

(ii) A Medicare supplement policy or certificate is intended to replace any other accident and health policy or certificate presently in force.

(B) A supplementary application or other form to be signed by the applicant and agent/producer containing such questions and statements may be used.

(2) Statements:

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) If, after purchasing this policy you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of suspension.

(5) If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(6) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

(3) Questions:

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be

guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.

[Please mark Yes or No below with an "X"]

To the best of your knowledge,

(1)(a) Did you turn age 65 in the last 6 months?

Yes\_\_\_\_ No\_\_\_\_

(b) Did you enroll in Medicare Part B in the last 6 months?

Yes\_\_\_\_ No\_\_\_\_

(c) If yes, what is the effective date? \_\_\_\_\_

(2) Are you covered for medical assistance through the state Medicaid program?

[NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.]

Yes\_\_\_\_ No\_\_\_\_

If yes,

(a) Will Medicaid pay your premiums for this Medicare supplement policy?

Yes\_\_\_\_ No\_\_\_\_

(b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes\_\_\_\_ No\_\_\_\_

(3)(a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START \_\_/\_\_/\_\_ END \_\_/\_\_/\_\_

(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes\_\_\_\_ No\_\_\_\_

(c) Was this your first time in this type of Medicare plan?

Yes\_\_\_\_ No\_\_\_\_

(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes\_\_\_\_ No\_\_\_\_

(4)(a) Do you have another Medicare supplement policy in force?

Yes\_\_\_\_ No\_\_\_\_

(b) If so, with what company, and what plan do you have [optional for Direct Mailers]?

---

(c) If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes\_\_\_\_ No\_\_\_\_

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)

Yes\_\_\_\_ No\_\_\_\_

(a) If so, with what company and what kind of policy?

---

---

---

---

(b) What are your dates of coverage under the other policy?

START \_\_/\_\_/\_\_ END \_\_/\_\_/\_\_

(If you are still covered under the other policy, leave "END" blank.)

(b)(1) Agents shall list any other health insurance policies they have sold to the applicant.

(2) List policies sold that are still in force.

(3) List policies sold in the past five (5) years that are no longer in force.

(c) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(d)(1) Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent or producer shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage.

(2) One (1) copy of the notice signed by the applicant and the agent or producer, except where the coverage is sold without an agent or producer, shall be provided to the applicant, and an additional signed copy shall be retained by the issuer.

(3) A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

(e) The notice required by subsection (d) of this section for an issuer shall be provided in substantially the following form in no less than 12-point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE  
SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE  
(Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.  
According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement or Medicare Advantage insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER AGENT, [BROKER, PRODUCER OR  
OTHER REPRESENTATIVE]

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason (check

one):

- Additional benefits.
- No change in benefits, but lower premiums.
- Fewer benefits and lower premiums.
- My plan has outpatient prescription drug coverage and I am enrolling in Part D.
- Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment.  
[optional only for Direct Mailers.]
- Other. (Please specify)

1. Note: If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing pre-existing condition limitations, please skip to statement 2 below. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund

your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

---

(Signature of Agent, Broker, Producer or Other Representative)\*

[Typed Name and Address of Issuer, Agent or Broker or Producer]

---

(Applicant's Signature)

---

(Date)

\*Signature not required for direct response sales.

(f) Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**23 CAR § 89-121. Filing requirements for advertising.**

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in Arkansas, whether through written, radio, or television medium or internet, to

the Insurance Commissioner for review or approval by the commissioner to the extent it may be required under state law.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**23 CAR § 89-122. Standards for marketing.**

(a) An issuer, directly or through its producers, shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;

(2) Establish marketing procedures to assure excessive insurance is not sold or issued;

(3) Display prominently by type, stamp, or other appropriate means on the first page of the policy the following: "Notice to buyer: This policy may not cover all of your medical expenses.";

(4) Inquire and otherwise make every reasonable effort to identify:

(A) Whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and health insurance; and

(B) The types and amounts of any such insurance; and

(5) Establish auditable procedures for verifying compliance with this subsection.

(b) In addition to the practices prohibited in Arkansas Code §§ 23-66-201 – 23-66-214 and § 23-66-301 et seq., the following acts and practices are prohibited:

(1) **Twisting.** Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing or tending to induce any person to:

(A) Lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy; or

(B) Take out a policy of insurance with another insurer;

(2) **High-pressure tactics.** Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat,

whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance; and

(3) **Cold-lead advertising.** Making use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that:

(A) A purpose of the method of marketing is solicitation of insurance; and

(B) Contact will be made by an insurance agent or producer or insurance company.

(c) The terms "Medicare supplement", "Medigap", "Medicare wrap-around", and words of similar import shall not be used unless the policy is issued in compliance with this part.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** Arkansas Code § 23-66-214 was repealed by Acts 2017, No. 283, § 13.

**23 CAR § 89-123. Appropriateness of recommended purchase and excessive insurance.**

(a) In recommending the purchase or replacement of any Medicare supplement policy or certificate, an agent or producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(b) Any sale of Medicare supplement coverage that will provide an individual more than one (1) Medicare supplement policy or certificate is prohibited.

(c) An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**23 CAR § 89-124. Reporting of multiple policies.**

(a) On or before March 1 of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one (1) Medicare supplement policy or certificate:

- (1) Policy and certificate number; and
- (2) Date of issuance.

(b) The items set forth above must be grouped by individual policyholder.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**23 CAR § 89-125. Prohibition against preexisting conditions, waiting periods, elimination periods, and probationary periods in replacement policies or certificates.**

(a) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

(b) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate that has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods for benefits similar to those contained in the original policy or certificate.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**23 CAR § 89-126. Prohibition against use of genetic information and requests for genetic testing.**

(a) This section applies to all policies with policy years beginning on or after May 21, 2009.

(b) An issuer of a Medicare supplement policy or certificate:

(1) Shall not deny or condition the issuance or effectiveness of the policy or certificate, including the imposition of any exclusion of benefits under the policy based on a preexisting condition, on the basis of the genetic information with respect to such individual; and

(2) Shall not discriminate in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual on the basis of the genetic information with respect to such individual.

(c) Nothing in subsection (b) of this section shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from:

(1) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(2)(A) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy.

(B) In such case, the manifestation of a disease or disorder in one (1) individual cannot also be used as genetic information about other group members and to further increase the premium for the group.

(d) An issuer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic test.

(e) Subsection (d) of this section shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment (as defined for the purposes of applying the regulations promulgated under Part C of Title XI and Section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) and consistent with subsection (b) of this section.

(f) For purposes of carrying out subsection (e) of this section, an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(g) Notwithstanding subsection (d) of this section, an issuer of a Medicare supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

(1) The request is made pursuant to research that complies with:

(A) 45 C.F.R. pt. 46, or equivalent federal regulations; and

(B) Any applicable state or local law or rules for the protection of human subjects in research;

(2) The issuer clearly indicates to each individual or, in the case of a minor child, to the legal guardian of such child, to whom the request is made that:

(A) Compliance with the request is voluntary; and

(B) Noncompliance will have no effect on enrollment status or premium or contribution amounts;

(3) No genetic information collected or acquired under this subsection shall be used for:

(A) Underwriting;

(B) Determination of eligibility to enroll or maintain enrollment status;

(C) Premium rates; or

(D) The issuance, renewal, or replacement of a policy or certificate;

(4) The issuer notifies the Secretary of the United States Department of Health and Human Services in writing that the issuer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted; and

(5) The issuer complies with such other conditions as the Secretary of the United States Department of Health and Human Services may by rule require for activities conducted under this subsection.

(h) An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(i) An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment.

(j) If an issuer of a Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of subsection (i) of this section if such request, requirement, or purchase is not in violation of subsection (h) of this section.

(k) For the purposes of this section only:

(1) "Issuer of a Medicare supplement policy or certificate" includes a third-party administrator or other person acting for or on behalf of such issuer;

(2) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual;

(3)(A) "Genetic information" means, with respect to any individual, information about:

(i) Such individual's genetic tests;

(ii) The genetic tests of family members of such individual; and

(iii) The manifestation of a disease or disorder in family members of such individual.

(B) Such term includes, with respect to any individual, any request for or receipt of genetic services, or participation in clinical research that includes genetic services, by such individual or any family member of such individual.

(C) Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman includes genetic information of any fetus carried by such pregnant woman or, with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member.

(D) The term "genetic information" does not include information about the sex or age of any individual;

(4) "Genetic services" means:

(A) A genetic test;

(B) Genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(C) Genetic education;

(5)(A) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes.

(B) The term "genetic test" does not mean an analysis of proteins or metabolites that:

(i) Does not detect genotypes, mutations, or chromosomal changes;

or

(ii) Is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a healthcare professional with appropriate training and expertise in the field of medicine involved; and

(6) "Underwriting purposes" means:

(A) Rules for, or determination of, eligibility, including enrollment and continued eligibility, for benefits under the policy;

(B) The computation of premium or contribution amounts under the policy;

(C) The application of any preexisting condition exclusion under the policy; and

(D) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Codification Notes.** "DNA" means deoxyribonucleic acid.

"RNA" means ribonucleic acid.

Section 264 of the Health Insurance Portability and Accountability Act of 1996 is found as a note to 42 U.S.C. § 1320d-2.

**23 CAR § 89-127. Availability of Medicare supplement benefit plans to applicants with a disability.**

(a) No later than July 1, 2018, at least one (1) of the ten (10) standardized Medicare supplement plans currently available from an issuer shall be made available to all applicants who qualify under this section by reason of disability.

(b) The issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for such policy or certificate is submitted during the six-month period beginning with the:

(1) Effective date of this part; or

(2) First month in which an individual first enrolled for benefits under Medicare Part B.

(c) For purposes of this section the phrase "by reason of disability" means a person who is entitled to benefits under Medicare Part A pursuant to Section 226(b) of the Social Security Act.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125, 23-79-404.

**Appendix A. Medicare Supplement Refund Calculation Form**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/308/23CARpt.89AppendixA.pdf>

**Appendix B. Form for Reporting Medicare Supplement Policies**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/309/23CARpt.89AppendixB.pdf>

### **Appendix C. Disclosure Statements**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/310/23CARpt.89AppendixC.pdf>

### **Appendix D. Benefit Chart of Medicare Supplement Coverage**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/311/23CARpt.89AppendixD.pdf>