



SCOTT A. WHITE
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

P.O. BOX 1157
RICHMOND, VIRGINIA 23218
1300 E. MAIN STREET
RICHMOND, VIRGINIA 23219
TELEPHONE: (804) 371-9741
scc.virginia.gov

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Administrative Letter 2023-01

TO: All Insurers Offering Medicare Supplement Policies

RE: Medicare Supplement Guaranteed Issue Eligibility

Pursuant to federal Medicaid continuous coverage requirements during the public health emergency ("PHE"), Virginia residents who were enrolled in Medicaid remained covered by Medicaid, regardless of eligibility changes. As of February 1, 2023, the Centers for Medicare & Medicaid Services ("CMS") began allowing states to restart Medicaid eligibility reviews, a process known as "PHE Medicaid Unwinding." Starting in March 2023, Virginia began reviewing members' Medicaid health coverage to make sure they still qualify.

The State Corporation Commission Bureau of Insurance ("BOI") finds that Virginia residents who were temporarily eligible for Medicaid during the PHE and who enrolled in Medicare Part B more than six months before their Medicaid eligibility ends may have missed their opportunity under [14 VAC 5-170-100](#) of the Virginia Administrative Code to purchase any Medicare supplement policy or certificate available.

Typically, persons who become eligible for Medicare receive a Medicare supplement open enrollment period of six (6) months. During this period, insurers are required to offer guaranteed issue rights to all applicants and are prohibited from discriminating in the pricing of Medicare supplement policies due to applicant health status. Insurers are prohibited from selling Medicare supplement policies to individuals on Medicaid under federal law. See [42 U.S.C. § 1395ss\(d\)\(3\)\(B\)\(iii\)](#).

To ensure low and moderate income Virginia seniors have access to affordable Medicare supplement policies or certificates they could have obtained if not for the PHE, the BOI is requesting that all health insurers writing Medicare supplement business in Virginia offer guaranteed issue rights to applicants who have exhausted or nearly exhausted their initial open enrollment period as a result of their continued enrollment in Medicaid and who can show verification of a Virginia Medicaid eligibility change.

Insurers should treat these applicants as "eligible persons" pursuant to [14 VAC 5-170-105](#) and extend guaranteed issue rights to allow applicants to enroll in any available Medicare supplement policy or certificate for the longer of: (i) 63 days starting on the date of a Medicaid eligibility change; or (ii) the end of their initial open enrollment period. Pursuant to [14 VAC 5-170-100](#), insurers shall not discriminate in the pricing of such a policy because of the health status,

claims experience, receipt of health care, or medical condition of an applicant, and preexisting condition exclusion periods should be credited for continuous periods of creditable coverage.

Because consumers were enrolled in both Medicaid and Medicare, this approach will most closely match the intent of Medicare supplement regulations related to other insurance coverage under [14 VAC 5-170-10](#) *et seq.* of the Virginia Administrative Code. This approach also aligns with [42 CFR § 406.27](#), effective January 1, 2023, which creates a special Medicare enrollment period for individuals who missed a Medicare enrollment period due to exceptional conditions, including those individuals whose Medicaid eligibility is terminated.

Any questions concerning this Administrative Letter may be addressed to Deputy Commissioner Julie Blauvelt at julie.blauvelt@scc.virginia.gov or (804) 371-9865.

Cordially,

A handwritten signature in black ink, appearing to read "Scott A. White", with a stylized flourish at the end.

Scott A. White
Commissioner of Insurance