



PUBLIC PROTECTION CABINET

Andy Beshear
GOVERNOR
Jacqueline Coleman
LIEUTENANT GOVERNOR

**Kentucky Department of
Insurance**
500 Mero Street, 2SE11
Frankfort, KY 40601
Phone: (502) 564-3630

Ray A. Perry
SECRETARY
Sharon P. Clark
COMMISSIONER

Toll Free: (800) 595-6053

ADVISORY OPINION 2023-05

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance ("Department"), on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL INSURERS AUTHORIZED TO TRANSACT HEALTH INSURANCE IN KENTUCKY AND WRITING MEDICARE SUPPLEMENT BUSINESS

FROM: SHARON P. CLARK, COMMISSIONER
KENTUCKY DEPARTMENT OF INSURANCE

RE: END OF THE FEDERAL MEDICAID EXPANSION AND MEDICARE SUPPLEMENT GUARANTEED ISSUE SPECIAL ENROLLMENT PERIOD

DATE: March 31, 2023

Effective Date

This advisory opinion becomes effective on April 1, 2023, pursuant to the Federal Omnibus Spending Bill and simultaneously with the effective date of the Emergency Regulation promulgated by the Kentucky Department of Insurance ("Department").

Purpose

The purpose of this Advisory Opinion is to advise all health insurers writing Medicare supplement business in the Commonwealth of Kentucky of the Department's interpretation of the requirements of 806 KAR 17:570, as it relates to the offering of Medicare supplement policies with guaranteed issue rights to applicants who experience a Kentucky Medicaid eligibility change due to the Federal Omnibus Spending Bill's Medicaid Unwinding – Prohibition on dropping people from Medicaid provision, regardless of the end of the Federal Covid-19 Public Health Emergency ("PHE").

Interpretation

In response to the PHE, in March 2020, the U.S Department of Health and Human Services (“HHS”) and the Centers for Medicare & Medicaid Services (“CMS”) temporarily waived certain Medicaid and Children’s Health Insurance Program (“CHIP”) requirements and conditions.

During the spring of 2020, the Kentucky Cabinet for Health and Family Services (“CHFS”) received approval from CMS to stop disenrolling members. CHFS acted to prevent persons enrolled in Medicaid from having a lapse in healthcare coverage during the Covid-19 pandemic.

Accordingly, during the PHE, CHFS did not disenroll Kentuckians whose Medicaid eligibility would have otherwise expired because they would have become eligible for Medicare. Typically, persons who become eligible for Medicare receive a Medicare supplement “open enrollment” period of six (6) months, pursuant to 806 Kentucky Administrative Regulation (“KAR”) 17:570 Section 13. 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. 806 KAR 17:570 Section 14(1)(b). Insurers are also prohibited from selling Medicare supplement policies to individuals on Medicaid under Federal Law. *See* 42 U.S.C. § 1395ss(d)(3)(B)(iii).

CMS has begun a process known as “PHE Medicaid Unwinding,” through which it will conduct Medicaid and CHIP eligibility reviews and will resume regular Medicaid eligibility operations for enrollees beginning on April 1, 2023. As part of PHE Medicaid Unwinding, CMS is requiring CHFS to move Medicaid members into Medicare savings programs if they meet Medicare eligibility requirements. However, many Medicaid members who became eligible for Medicare during the PHE will have exhausted their six (6)-month Medicare supplement open enrollment period.

To help ensure low-income Kentucky seniors have access to affordable Medicare supplement policies, the Commissioner advises all health insurers writing Medicare supplement business in Kentucky of the Department’s interpretation of 806 KAR 17:570. More specifically, for applicants who have exhausted their initial open enrollment period because of their continued enrollment in Medicaid (including those with both Medicaid and Medicare policies, referred to as “dual eligible” individuals), the Department interprets that regulation to require that guaranteed issue rights for Medicare supplement policies are offered to all such applicants. These applicants will be required to provide verification from CHFS of a Kentucky Medicaid eligibility change. Insurers should treat applicants as “eligible persons,” pursuant to 806 KAR 17:570 Section 14(2), and permit applicants to enroll in a Medicare supplement policy with guaranteed issue rights and an enrollment period starting immediately on the date of the person’s Medicaid eligibility change, as documented by in their notification from CHFS, and continuing for sixty-three (63) days afterwards.

This Advisory Opinion is intended to serve as notice of the Department’s interpretation of 806 KAR 17:570 to all insurers authorized to transact business in Kentucky under a health line of

authority. Licensees and registered entities are charged with notifying their agents and employees of the Department’s interpretation. The Department does not provide legal advice to insurers or entities. The information provided herein has been offered to clarify the Department’s regulatory authority pursuant to Kentucky Revised Statute (“KRS”) 304.2-100, KRS 304.14-510, and 806 KAR 17:570.

Questions regarding this advisory opinion should be directed to the Senior Health Insurance Products Division, Phone (502) 564-6088; TTY (800) 648-6056; Fax: (502) 564-2728; or Email: DOI.HealthMail@ky.gov.

The Commissioner encourages insurers and applicants to contact Kentucky’s State Health Insurance Assistance Program (“SHIP”) with questions. SHIP assistance is available at chfs.ky.gov or by calling the statewide SHIP Hotline at 877-293-7447 (option #2), or by contacting the Department for Aging and Independent Living (“DAIL”) at (502) 564-6930 to request a SHIP counselor.

Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this _____ day of March 2023