



## PUBLIC PROTECTION CABINET

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### **ADVISORY OPINION 2023-06**

*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:** MEDICARE SUPPLEMENT POLICIES AVAILABLE, ISSUED, OR RENEWED ON OR AFTER JANUARY 1, 2024

**DATE:** June 15, 2023

#### **Effective Date**

This advisory opinion becomes effective on June 15, 2023. Insurers should submit compliant rate and form filings for approval on or before August 1, 2023. 2023 Regular Session House Bill 345, Chapter 182, Acts of the General Assembly ("HB 345") requires all policy forms and rates subject to the bill to be filed so that applications are available on or before January 1, 2024. Accordingly, insurers should submit compliant rate and form filings on or before August 1, 2023, to ensure approval and implementation before January 1, 2024. This will allow for up to ninety (90) days for Department approval and thirty (30) days for notice to insureds.

#### **Purpose**

The purpose of this Advisory Opinion is to advise all insurers writing Medicare supplement business in the Commonwealth of Kentucky of the Department's interpretation of the requirements of HB 345, related to:

1. Calculation of the weighted average premium; and

2. Expanding access to Medicare supplement policies to eligible applicants under age sixty-five (65), as it relates to the sale or offering of Medicare supplement policies.

**Scope**

HB 345 applies to all Medicare supplement policies, including group association plans and closed blocks, that are available, issued, or renewed on or after January 1, 2024.

**Interpretation**

During the 2023 Regular Session, the General Assembly of the Commonwealth of Kentucky passed legislation to prohibit certain trade practices in the sales of Medicare supplement products.

**Weighted Average Premium**

The new language provides for a calculation of the premium, which is to be used in all filings for Medicare supplement policies for those eligible applicants under the age of sixty-five (65). The new language defines the weighted average premium, as a premium rate to be calculated as follows:

1. First, multiply the premium rate for each age band, age sixty-five (65) and over, by the number of Kentucky insureds in-force in that age band to arrive at the total Kentucky premium for each age band age sixty-five (65) and over;
2. Then, calculate the sum of the Kentucky premium for all age bands age sixty-five (65) and over to arrive at the total Kentucky premium for all age bands age sixty-five (65) and over;
3. Then, calculate the sum of the Kentucky insureds in-force for all age bands age sixty-five (65) and over to arrive at the total number of Kentucky insureds in-force for all age bands age sixty-five (65) and over; and
4. Last, divide the total determined under subparagraph 2. of this paragraph by the total determined under subparagraph 3. of this paragraph to arrive at the weighted average aged premium rate.

The following rate chart has been actuarially developed for the implementation of this bill and should be used until the first filings can be reviewed and more data is collected and analyzed, unless the insurer has pre-existing in-force Medicare supplement business, which should be actuarially justified:

<b>Age</b>	<b>HB 345 Distribution</b>
65	26.37%
66	7.55%
67	7.45%
68	7.05%
69	6.55%
70	6.20%
71	5.75%
72	5.25%
73	4.70%

74	4.40%
75	3.30%
76	2.90%
77	2.60%
78	2.30%
79	2.00%
80	0.95%
81	0.90%
82	0.75%
83	0.65%
84	0.50%
85	0.45%
86	0.35%
87	0.30%
88	0.25%
89	0.15%
90	0.10%
91	0.09%
92	0.05%
93	0.03%
94	0.03%
95	0.03%
96	0.02%
97	0.01%
98	0.01%
99	0.01%

These rate distributions should be used for calculating the average weighted premium for all forms and blocks of Medicare supplement business. Companies should use the same average market distribution, regardless of company experience and policy form of the under 65 rate calculation. An excel file template is being developed and will be made available via SERFF for all insurers to use so that proposed rates and in-force insureds can be submitted uniformly.

#### Form and Rate Filings

Insurers should be prepared to include compliant outlines of coverage, applications, and policies for eligible applicants under age sixty-five (65) in their form and rate filings to comply with the new law. Accordingly, the new provisions will require policies with limited required coverage, which are now approved for eligible applicants under age sixty-five (65), to have the same plan approved for eligible applicants both under and over age sixty-five (65).

The bill adds additional protections for applicants, including a new “open enrollment” period and restrictions on the use of waiting periods and exclusions of benefits due to preexisting conditions. One of the bill’s provisions requires that applicants receive a Medicare supplement “open enrollment” period yearly, within sixty (60) days of the applicants’ birthday date (also referred to as the “birthday rule”) in which to switch insurers for the same plan they currently have. *See*

section 1 (2)(c)2. of HB 345. 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. *See* 806 KAR 17:570 Section 14(1)(b). Additionally, applicants that meet the new Medicare eligibility requirements will not be subject to waiting periods or exclusions of benefits due to preexisting conditions, and plans should, therefore, be filed accordingly.

The Department interprets this bill to require that guaranteed issue rights for Medicare supplement policies are offered to all such applicants. 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 on January 1, 2024. Furthermore, all subject rate and form filings should be submitted on or before August 1, 2023, to allow for a ninety (90) day approval process prior to the issuance or sale of compliant policies for the 2024 plan year.

When policyholders become eligible for Medicare by reaching the age of sixty-five (65), under 42 C.F.R. §406.20(b), they should be transferred out of a risk pool for policyholders under age sixty-five (65), and into the broader sixty-five (65)-and-older risk pool. All insurers should automatically transfer policyholders under age sixty-five (65) to the larger risk pool with the lower-cost policy. Insurers should provide notice, either in addition to, or as a part of, the annual premium increase notice, to inform the insureds of the premium change and provide them notice of the birthday rule enrollment.

This Advisory Opinion is intended to serve as notice of the Department’s interpretation of 2023 Regular Session House Bill 345 to all insurers authorized to transact business in Kentucky under a health line of authority. Insurers, licensees, and registered entities are charged with notifying their agents and employees of the Department’s interpretation. The Department does not provide private legal advice to insurers or licensees. The information provided herein has been offered to clarify the Department’s regulatory authority pursuant to Kentucky Revised Statute (“KRS”) 304.2-100, KRS 304.14-500 to 550, 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](mailto:DOI.HealthMail@ky.gov).



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Sharon P. Clark, Commissioner  
Kentucky Department of Insurance  
On this 15 day of June 2023