AREF
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NRLN POSITION PAPER
PRE-EXISTING CONDITIONS and
MEDIGAP / MEDICARE ADVANTAGE POLICIES

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Pre-Existing Conditions and Public Policy

Health care insurance providers have traditionally denied health care policy coverage to applicants who admit to a pre-existing condition on their policy application. This denial due pre-existing condition has resulted in some applicants not being able to find an insurer who will insure them at all or commonly results in their having to accept policies where the combination of premium, deductible, copay and coinsurance costs are prohibitively expensive. This problem is particularly acute were applicants are retired and living on a constantly eroding fixed income including Social Security income.

Congress dealt with the pre-existing conditions dilemma in 2010 by passing the 2010 Affordable Care Act (ACA). The ACA protects retirees who are not Medicare eligible (under 65) by mandating that insurance companies can no longer use pre-existing conditions as a reason for denial of coverage but does not extend this protection to include Medicare-eligible retirees. This forestalling of the inevitable is not justifiable as a correct moral or ethical way to set public policy on this matter.

Millions of Americans under age 65 (including millions of baby boomers) who now benefit from the ACA pre-existing condition protection will lose that protection at age 65. Pre-existing conditions are problematic for those over age 65 now and for those under age 65 currently protected but who will survive that age. Tens of millions of them will join the Medicare-eligible ranks over the next 10-15 years.

Medicare, Medicare Advantage and Medigap Policy Options for Retirees

Millions of Medicare-eligible retirees on fixed incomes elected to purchase Medicare Advantage plans over Original Medicare A & B because of lower premium costs and/or enhanced benefits created by subsidies authorized by Congress in the 2003 Medicare Modernization Act (MMA). The market share of the total the Medicare market (plans A, B and now D) that is held by Medicare Advantage plans (plan C) provided by independent insurance companies has grown from 10%, pre the 2003 MMA (implemented in 2007), to a reported 25% of approximately 48 million Medicare participants in 2013.

The Affordable Care Act (ACA) of 2010 included a provision that set a time schedule for a phasing out of the MMA subsidies over a five-year period that would place Medicare Advantage plans on an apples to apples competitive basis with existing Original Medicare plans. The subsidy phase out has begun and although health care costs in general have been decreasing or in some cases increasing but at a much lower rate over the past three years, the premium, deductible, copay and coinsurance costs to Medicare Advantage plan enrollees is increasing at a rate in excess of increases in most other health care plan options.

Medicare Supplemental plans or Medigap plans compete directly with Medicare Advantage plans in the Medicare supplemental plan market space. While they have also been increasing in price, they are popular because they protect millions of Americans, and particularly retirees on fixed income from extraordinary copay liability (catastrophic liability) and most Medigap plan are competitively priced, on a state-by-state basis. Nonetheless, premium costs for Medigap plans track the same health care cost

changes that affect MA plans but Medigap plans are not subsidized and are viewed as competitive with MA plans. Many retires are feeling the pinch of MA plan premium increases and coverage changes and understand now that the loss of MA plan subsidies will erode away their competitive strength.

Original Medicare cost are actually coming down, annual premium increases have been minimal for three years which affects Medigap market pricing but to a lesser degree than MA plans. The combination of the Original Medicare cost stabilization, double-digit MA plan increases and the prospect for more pressure on reducing costs is creating a buzz about prospects for robust competition and a better deal for retirees who in many cases are desperately looking for comprehensive coverage at more competitive rates.

Pre-Existing Conditions - Public Policy Prohibits Equitable Treatment of Retirees Over Age 65

The rights to guaranteed issue of Medigap/Medicare Advantage policy means that providers of these plans may force individuals to prove their "insurability" by making them pass a physical examination. That right to guaranteed issue does not protect Medicare beneficiaries in all instances against the application of pre-existing condition exclusions. Federal Medigap law follows the HIPPA requirements and allows Medigap/Medicare Advantage insurers to exclude coverage of pre-existing conditions for up to 6 months if an individual did not have creditable coverage before their initial enrollment period.

In-network changes, doctor exclusions, benefit reductions, and the inability of Medicare Advantage policies enrollees to re-enroll in Original Medicare with supplemental Medigap policies are negatives.

Original Medicare beneficiaries ages 65 and older have the right to purchase a Medigap or Medicare Advantage policy sold in their state when they become Medicare eligible at age 65. The rights to guaranteed issue of a Medigap/Medicare Advantage policy extends for the first six months after both of these conditions are met.

Enrollees must choose to enroll in Original Medicare Parts A & B and if they chose to also enroll in a Medicare Supplement or Medigap plan they must do so within 6 months from the date of enrollment.

Medicare Advantage plans (Part C) supplant or effectively replace Original Medicare coverage and provide a variety of enhancements including prescription drugs (Part D).

As part of the Affordable Care Act insurers in the individual and group markets are precluded from applying any pre-existing condition exclusions starting in 2014. It also provided this protection to Medicare Advantage plans but did not apply that same protection to those who purchased Medigap Plans to supplement Original Medicare.

The Centers for Medicare and Medicaid Services rules do not protect guaranteed issue rights of those affected where they have exceeded a 12-month coverage time limitation period from the date of plan enrollment. As a result, Medigap insurers may not allow retirees to buy into Medigap plans due to pre-existing medical conditions, many of which may have developed while covered by a Medicare Advantage plan, nor can retirees freely switch to plans annually. See table on page 4 for information on Medicare "Guaranteed Issue Rights", What You Have a Right to Buy and When to Apply for a Medigap policy.

The Affordable Care Act established several rules for Medicare Advantage plans that are similar to rules for plans through the new state insurance exchanges:

- Pre-existing conditions cannot be considered when changing insurance during the annual enrollment period.
- Community/regional versus age related policy pricing applies to all policies.
- The ACA also established an 85% benefit/premium ratio for Medicare Advantage.

The ACA protects Medicare Advantage plan enrollees from having to meet the pre-existing conditions at the time of enrollment but excludes retiree enrollees in Medigap plans from the same protection. This precludes retirees from being able to purchase similar coverage at equal or lower cost and leaves them with the personal financial risk of having to pay out of pocket catastrophic costs.

Enrollees in Medigap policies who have exceeded the Medicare Guaranteed Rights issue period (12 months) are subject to losing the right to choose freely in the health care insurance market.

Retirees whose companies drop health care coverage, including MA group coverage, have a 63-days guarantee issue enrollment window to choose another MA plan or enroll in Medicare and Medigap but then after 12 months no longer are protected from the Medigap pre-existing conditions risk.

Summary:

Retirees under age 65 enjoy the protection of guaranteed issue rights provide for in the Affordable Care Act (ACA). At age 65, when Medicare eligible, those who choose to enroll stay in Original Medicare are unaffected. Those who choose to enroll in a Medicare Advantage (MA) plan may reenroll in another MA plan with different coverage or a lower price within 12 months of enrollment or during the annual enrollment period.

At age 65, when Medicare eligible, those who choose to enroll in a Medigap plan during the first 6 months after enrollment in Original Medicare may only change plans with in a 12- month window after Medicare enrollment or face loss of guaranteed issue and must complete physical examinations in order to meet pre-existing condition requirements.

Retirees over age 65 who terminate a Medigap policy to enroll in an MA plan, Medicare Select policy, or PACE program for the first time and then want to terminate the MA plan must do so within the first 12 months of enrollment in the MA plan or lose guaranteed issue rights if they select another MA plan.

Without the following changes to current Medicare rules, seniors are effectively locked into health care plans that may not adequately cover their needs and are increasingly more expensive. The lack of access to more competitive solutions for Medicare eligible retires over age 65 should be reduced if not eliminated.

Proposed Legislative Action

Amend the Affordable Care Act to eliminate pre-existing conditions as a barrier to issuance of health care polices for Americans age 65 and older:

- Allow Medigap Guaranteed Issue Rights to be the same as those for Medicare Advantage plan.
- Use community-rated pricing.
- Establish an 85% benefit/premium ratio.

Sources:

National Academy of Elder Law Attorneys, NAELA.org (July 25, 2013); "Talking Points Pre-Existing Conditions and Sale of Medigap Policies". **2014 Medicare and you handbook. Medicare.gov**; "When Can I Buy Medigap?" and "Guaranteed issue rights"

Guaranteed issue right situation...	You have a right to buy...	When to apply for Medigap policy...
#1: You joined a Medicare Advantage or PACE program when you 1st enrolled in Medicare - within the 1st 12 months you want to leave	ALL MEDIAGAP PLANS	Within the 1st 12 months after joining the Medicare Advantage program.
#2 Your employer group health plan coverage ends through no fault of your own	A, B, C, F, F High, K, or L	No later than 63 calendar days from the date your coverage ends.
#3 You terminated a Medigap policy to enroll in a Medicare Advantage plan, Medicare Select policy, or PACE program for the 1st time, now you want to terminate the MA plan after no more than 12 months of enrollment	Original; Plan. If not available, then A, B, C, F, F High, K, or L	Within the 1st 12 months after joining the Medicare Advantage, Medicare Select policy or PACE program.
#4: You are in a Medicare Advantage (MA) Plan, and your plan is leaving Medicare or stops giving care in your area, or you move out of the plan's service area.	Medigap Plan A, B, C, F, K, or L sold in your state. You only have this right if you switch to Original Medicare rather than joining another MA plan.	No later than 63 calendar days after your health care coverage ends. Medigap coverage can't start until your M A Plan coverage ends.
#5: You have Original Medicare and an employer group health plan (including retiree or COBRA coverage) or union coverage that pays after Medicare pays and that plan is ending. Note: You may have additional rights under state law.	Medigap Plan A, B, C, F, K, or L sold in your state. You only have this right if you switch to Original Medicare rather than joining another MA plan.	No later than 63 calendar days after the latest of these 3 dates: Date the coverage ends. Date on the notice you get telling you that coverage is ending (if you get one) Date on a claim denial.
#6: You have Original Medicare and a Medicare SELECT policy. You move out of the Medicare SELECT policy's service area. Keep Medigap policy, or switch to another Medigap policy	Medigap Plan A, B, C, F, K, or L that is sold by any insurance company in your state or the state you are moving to.	No later than 63 calendar days after your health care coverage ends.
#7: (Trial Right) You joined a Medicare Advantage Plan or Programs of All-inclusive Care for the Elderly (PACE) when you were first eligible for Medicare Part A at 65, and within the first year of joining, you decide you want to switch to Original Medicare.	Any Medigap policy that is sold in your state by any insurance company.	No later than 63 calendar days after your coverage ends. Note: Your rights may last for an extra 12 months under certain circumstances.
#8: (Trial Right) You dropped a Medigap policy to join a Medicare Advantage Plan (or to switch to a Medicare SELECT policy) for the first time; you have been in the plan less than a year, and you want to switch back.	The Medigap policy you had before joining the MA Plan or Medicare SELECT, if the same insurance company still sells it. If it isn't available, you can buy Medigap Plan A, B, C, F, K or L sold in your state.	No later than 63 calendar days after your coverage ends. Note: Your rights may last for an extra 12 months under certain circumstances.
#9: A Medigap insurance company goes bankrupt and you lose coverage, or your Medigap policy coverage ends through no fault of your own.	Medigap Plan A, B, C, F, K, or L that is sold in your state by any insurance company.	No later than 63 calendar days from the date your coverage ends.
#10: You leave a Medicare Advantage Plan or drop a Medigap policy because the company hasn't followed the rules, or it misled you.	Medigap Plan A, B, C, F, K, or L that is sold in your state by any insurance company.	No later than 63 calendar days from the date your coverage ends.

Source: www.medicare.gov and 2014 Medicare and you handbook

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