

CHAPTER 139

AN ACT concerning Medicare supplement coverage and amending P.L.1995, c.229.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1995, c.229 (C.17B:26A-12) is amended to read as follows:

C.17B:26A-12 Findings, declarations relative to Medicare supplement insurance.

1. The Legislature finds and declares that:

- a. As of April 1, 1995, individuals in the State of New Jersey under age 65 who became eligible for Medicare benefits due to a disability or because they suffer from the end stage of renal disease do not have access to Medicare supplement insurance, otherwise known as "Medigap" insurance.

- b. Prior to that date only one health insurance carrier in New Jersey offered Medicare supplement insurance contracts to the under 65 population. Unsustainable losses, caused in part by the fact that this carrier was the only carrier providing such coverage, led to the carrier's withdrawal from the Medicare supplement insurance market for the under 65 population on March 31, 1995.

- c. Because Medicare supplement insurance pays for many of the health care expenses not covered by Medicare, the absence of Medicare supplement insurance will eventually leave thousands of blind, AIDS, disabled and dialysis patients in New Jersey without any means of secondary insurance to supplement their Medicare coverage. For many of these people with serious illnesses, the 20 percent co-payments and deductibles charged by Medicare will cause financial hardship and emotional distress. If no action is taken, Medicare recipients under 65 years old will be forced to deplete their personal assets and may eventually be forced to resort to Medicaid to supplement their health care needs.

- d. Subsequent to the enactment of P.L.1995, c.229 (C.17B:26A-12 et seq.), section 401 of the Medicare Access and CHIP Reauthorization Act of 2015, Pub. L. 114-10, amended section 1882 of the Social Security Act (42 U.S.C. s.1395ss), prohibiting the issue of Medicare supplement policies that provide coverage of the Medicare Part B deductible to an individual who, on or after January 1, 2020, is a newly eligible Medicare beneficiary, and further specifying that, with respect to newly eligible Medicare beneficiaries, reference to a Medicare supplement policy which has a benefit package classified as Medicare Supplement Plan C shall be deemed, as of January 1, 2020, to be a reference to a Medicare supplement policy which has a benefit package classified as Medicare Supplement Plan D, unless the Secretary of the United States Department of Health and Human Services provides otherwise.

- e. Therefore, the Legislature declares that it is in the public interest:

- (1) to ensure that Medicare supplement insurance is available to the individuals under 65 years of age who become eligible for Medicare benefits;

- (2) to require all health insurance carriers who currently sell Medicare supplement insurance to the age 65 and over population to also offer, at a minimum, Medicare Supplement Plan C coverage to the under age 65 population who become eligible for Medicare prior to January 1, 2020;

- (3) to require all health insurance carriers that currently sell Medicare supplement insurance to the age 65 and over population to also offer, at a minimum, Medicare Supplement Plan D coverage to the under age 65 population who become newly eligible on or after January 1, 2020;

(4) to establish a mechanism that will: allow the premiums on those Medicare supplement insurance policies and contracts to remain affordable; encourage insurance carriers to continue to serve or enter this market; and provide for the equitable sharing of any losses;

(5) to ensure that premiums for the more than 200,000 New Jersey residents who have purchased Medicare supplement insurance remain affordable and do not become subject to excessive rate increases; and

(6) that regulations necessary to effectuate the purposes of this act be promulgated by the Commissioner of Banking and Insurance expeditiously due to the urgency of the situation.

2. Section 2 of P.L.1995, c.229 (C.17B:26A-13) is amended to read as follows:

C.17B:26A-13 Medicare supplement plans offered.

2. a. Except as otherwise provided in subsection d. of this section, every carrier issuing or renewing Medicare supplement insurance policies or contracts shall, as a condition of issuing or renewing health benefits plans in this State:

(1) offer and renew, at a minimum, Medicare Supplement Plan C policies or contracts to persons in this State 50 years of age or older who are entitled to Medicare benefits due to disability prior to January 1, 2020;

(2) offer and renew, at a minimum, Medicare Supplement Plan D policies or contracts to persons in this State 50 years of age or older who are newly eligible Medicare beneficiaries on or after January 1, 2020; and

(3) offer and renew Medicare Supplement Plan D policies or contracts to persons in this State 50 years of age or older who are entitled to Medicare benefits due to disability prior to January 1, 2020 if such a person applies for Medicare Supplement Plan D on or after January 1, 2020 but during the six-month period beginning with the first of the month in which the individual is enrolled in Medicare Part B, and the individual is not covered by any other Medicare Supplement Plan.

b. No carrier shall deny or condition the issuance or renewal of a Medicare supplement insurance policy or contract available for sale in this State pursuant to subsection a. of this section nor discriminate in the pricing of such policy or contract because of the health status, claims experience, receipt of health care or medical condition of an applicant if an application for Medicare Supplement Plan C is submitted during the six-month period beginning with the first month in which an individual is enrolled for benefits under Medicare Part B or if the application for Medicare Supplement Plan D is submitted within 12 months beginning with the first month in which an individual is enrolled for benefits under Medicare Part B if the individual is a newly eligible Medicare beneficiary on or after January 1, 2020.

c. Subsections a. and b. of this section shall not be construed as preventing the exclusion of benefits under a policy or contract during the first three months, based on a preexisting condition for which the insured received treatment or was otherwise diagnosed during the six months before the policy or contract became effective, except that the limitation shall not apply to an individual who has, under a prior health benefits policy or contract, with no intervening lapse in coverage, been treated or diagnosed by a physician for a condition under that policy or contract or satisfied a three-month preexisting condition limitation.

d. (1) Notwithstanding the provisions of subsection a. of this section to the contrary, a carrier that does not currently issue or renew individual Medicare supplement insurance policies or contracts and does issue and renew Medicare supplement insurance policies or contracts for groups whose membership in the group is not based on health status, claims experience, receipt of health care or medical condition, shall not be required to provide

coverage to persons eligible for Medicare supplement insurance coverage pursuant to subsection a. of this section, other than to members of the group.

(2) No group to which the provisions of paragraph (1) of this subsection apply shall institute an age requirement for participation in the group after June 1, 1995.

e. (1) Rates for Medicare supplement insurance policies or contracts issued pursuant to this section shall be no greater than the lowest rate charged by a carrier for the same type of policies or contracts issued to persons 65 years of age and over and shall be formulated in accordance with the provisions of section 6 of P.L.1982, c.95 (C.17:35C-6) or section 6 of P.L.1982, c.94 (C.17B:26A-6), as appropriate, and any rules or regulations promulgated pursuant thereto.

(2) Following the close of each carrier's accounting year, if the commissioner determines that a carrier's loss ratio for policies or contracts issued pursuant to section 2 or 3 of P.L.1995, c.229 (C.17B:26A-13 or 17B:26A-14) was less than 75% for group policies or contracts or less than 65% for individual policies or contracts for that calendar year, the carrier shall be required to refund to the holders of any policy or contract the difference between the amount of net earned premium it received that year and the amount that would have been necessary to achieve the 75% or 65% loss ratio, as appropriate.

3. Section 3 of P.L.1995, c.229 (C.17B:26A-14) is amended to read as follows:

C.17B:26A-14 Rules, regulations; rates; plan provisions.

3. a. The commissioner shall adopt rules and regulations establishing a plan to provide Medicare Supplement Plan C coverage of the standardized Medicare supplement plans to persons under 50 years of age in this State who are entitled to Medicare benefits due to disability prior to January 1, 2020, and further, establishing a plan to provide Medicare Supplement Plan D coverage to persons in this State under 50 years of age who are entitled, on a newly eligible basis, to Medicare benefits due to disability on or after January 1, 2020.

b. The plan shall not deny or condition the issuance or renewal of a Medicare supplement insurance policy or contract available for sale in this State pursuant to subsection a. of this section nor discriminate in the pricing of such policy or contract because of the health status, claims experience, receipt of health care or medical condition of an applicant if an application for a Medicare Supplement Plan C policy or contract is submitted during the six-month period beginning with the first month in which an individual is enrolled for benefits under Medicare Part B or if the application for a Medicare Supplement Plan D policy or contract is submitted during the 12-month period beginning with the first month in which an individual is enrolled for benefits under Medicare Part B, and a newly eligible Medicare beneficiary on or after January 1, 2020. The plan shall provide that an individual who becomes eligible for Medicare due to disability prior to January 1, 2020 has an opportunity to apply for Medicare Supplement Plan D if the individual applies on or after January 1, 2020, but during the six-month period beginning with the first of the month in which the individual is enrolled for benefits under Medicare Part B, and the individual is not covered by any other Medicare Supplement Plan.

c. Subsections a. and b. of this section shall not be construed as preventing the exclusion of benefits under a policy or contract during the first three months, based on a preexisting condition for which the insured received treatment or was otherwise diagnosed during the six months before the policy or contract became effective.

d. The plan shall provide for the appointment of a contracting carrier to provide the coverage specified in subsection a. of this section. The carrier shall have experience in

providing and servicing standardized Medicare supplement insurance policies or contracts to persons in this State.

e. The rates for the plan established pursuant to subsection a. of this section shall be no greater than the lowest rate charged by the contracting carrier for Medicare Supplement Plan C or Medicare Supplement Plan D policies or contracts, as applicable, issued by the contracting carrier to persons pursuant to subsection a. of section 2 of P.L.1995, c.229 (C.17B:26A-13).

f. The plan shall provide for the appointment of a governing board which shall be responsible for implementing the provisions of P.L.1995, c.229 (C.17B:26A-12 et seq.) consistent with the rules and regulations adopted pursuant to subsection a. of this section. The governing board shall include representatives from, among others, the carriers and health maintenance organizations subject to the provisions of section 4 of P.L.1995, c.229 (C.17B:26A-15).

4. Section 6 of P.L.1995, c.229 (C.17B:26A-17) is amended to read as follows:

C.17B:26A-17 Definitions.

6. As used in this act:

"Carrier" means an insurance company or service corporation authorized to issue health benefits plans in this State.

"Financially impaired" means a carrier or health maintenance organization which, after the effective date of P.L.1995, c.229 (C.17B:26A-12 et seq.), is not insolvent, but is deemed by the commissioner to be potentially unable to fulfill its contractual obligations, or a carrier or health maintenance organization which is under an order of rehabilitation or conservation by a court of competent jurisdiction.

"Health benefits plan" means a hospital and medical expense insurance policy; hospital service corporation contract, medical service corporation contract or health service corporation contract delivered or issued for delivery in this State.

"Newly eligible" means first eligible for Medicare benefits by reason of age or disability on or after January 1, 2020, in accordance with 42 U.S.C. s.426 or 426-1.

5. This act shall take effect immediately.

Approved June 26, 2019.