STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Amendment Of Rules Regarding: Medicare Supplement Insurance Minimum Standards, North Dakota Administrative Code Chapter 45-06-01.1	))))))	**NOTICE OF PROPOSED RULEMAKING** **FILE NO. RU-08-228**

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES AND NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that the North Dakota Insurance Department will hold a public hearing to address proposed amendments to Chapter 45-06-01.1 of the North Dakota Administrative Code relating to Medicare Supplement Insurance Minimum Standards.

The hearing will be held at 11:00 a.m., central time, April 14, 2009, in the AV Room 212, Second Floor, Judicial Wing, State Capitol, Bismarck, North Dakota.

The conference report of the federal Medicare, Prescription Drug, Improvement and Modernization Act of 2003 (MMA) included language encouraging the National Association of Insurance Commissioners (NAIC) to modernize the "Medigap" (Medicare Supplement) market. In March 2007, the NAIC Plenary approved a modernization proposal in the form of revisions to the NAIC Medigap model. However, at that time states were unable to adopt these revisions in their states until on July 15, 2008, when this authority was granted by the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). MIPPA also requires additional changes to the Medigap model. In addition, Congress enacted the Genetic Information Nondiscrimination Act of 2008 (GINA) on May 21, 2008. This law also calls for changes to the NAIC Medigap model.

On September 28, 2008, the NAIC adopted revisions to the NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act. The revised NAIC Model Regulation includes major changes to Medigap plans and benefits authorized by MIPPA. In addition, the model revisions also contain changes required by GINA. States must adopt the NAIC model revisions in order to continue to regulate the Medigap market. MIPPA and GINA established strict deadlines for state adoption of these revisions.

Section 45-06-01.1-02. A definition was added for "pre-standardized" plans, to refer to policies issued prior to the state effective date for revisions conforming to the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). A definition was added for "1990 standardized" plans, to refer to policies issued on or after the state effective date for revisions conforming to OBRA '90 but prior to June 1, 2010. A definition was added for "2010 standardized" plans, to refer to policies issued on or after June 1, 2010.

Section 45-06-01.1-04. Changes to cross-references changes were made.

Section 45-06-01.1-05. This section continues to be retained for transitional purposes, and governs "pre-standardized" policies or certificates. A reference to "copayment" was added. This update was made to mirror the new language in Sections 45-06-01.1-06 and 45-06-01.1-06.1.

Section 45-06-01.1-06. This section is retained for transitional purposes, and governs "1990 standardized" policies or certificates. A reference to "copayment" was added. This update was made to mirror the new language in Sections 45-06-01.1-05 and 45-06-01.1-06. Transition standards are provided which permit companies to offer existing policyholders the opportunity to exchange their current policy for a new policy without medical underwriting. The company has the choice whether or not to make such a transition available. If the company chooses not to make such a transition available, existing policyholders may still apply for a new policy, subject to medical underwriting, if they so choose.

Section 45-06-01.1-06.1. This new section includes standards for all modernized 2010 standardized policies effective on or after June 1, 2010. This section is intended to be similar to Section 45-06-01.1-06, which governs 1990 standardized policies and has been placed next to that section for ease of reference. This section describes the new hospice benefit, which was created to be part of the basic (core) benefits. In contrast to the standards for the 1990 standardized additional benefits, there are <u>no</u> standards for the following benefits which have been eliminated or (in the case of the prescription drug benefits) are no longer applicable:

- 80% coverage of the Part B Excess Charge
- Basic Outpatient Prescription Drug Benefit
- Extended Outpatient Prescription Drug Benefit
- Preventive Medical Care Benefit
- At-Home Recovery Benefit

The descriptions of Plans K and L have been placed in Section 45-06-01.1-07.1, rather than Section 45-06-01.1-06.1.

Section 45-06-01.1-07. This section is retained for transitional purposes, and governs "1990 standardized" policies or certificates. No significant changes were made.

Section 45-06-01.1-07.1. This new section includes standards for all modernized 2010 standardized policies effective on or after June 1, 2010. This section is intended to be similar to Section 45-06-01.1-07, which governs 1990 standardized policies and has been placed next to that section for ease of reference.

This language is intended to promulgate a new requirement in MIPPA. Medigap rules already require that carriers wishing to offer any Medicare supplement plan in a state must offer at least Plan A. MIPPA expands this requirement so that if a carrier wishes to offer any plan(s) in addition to Plan A, then they must also offer either Plan C or Plan F. This requirement is also reflected in a drafting note at the end of Section 45-06-01.1-07.1.

The makeup of Plans D and G have changed. The makeup for new Plans M and N have also been added. In addition, there are no standards for the makeup of Plans E, H, I, and J as those plans have been eliminated.

The full descriptions of the benefits contained in Plans K and L have been added to this section. This is a change from the format of Sections 45-06-01.1-06 and 45-06-01.1-07 for 1990 standardized policies.

The language describing new or innovative benefits has been updated slightly from the version in Section 45-06-01.1-07. In addition to stylistic changes, this section deletes reference to prescription drug benefits, and also includes stronger language to reinforce the fact that these benefits should not impact the goal of Medigap simplification and should not be used to change or reduce benefits in any standardized plan.

Section 45-06-01.1-09.1. "Program" was changed to "provider".

Section 45-06-01.1-11. No significant changes were made

Section 45-06-01.1-12. A new subsection was added that requires Medicare supplement insurers who do use attained age rating as a rate setting methodology to apply the age component to its rates annually.

Section 45-06-01.1-13. This section was amended to provide that an issuer provide commission for the sale of a Medicare supplement policy only if the first-year commission or other first-year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period. It adds a subsection that provides that the commission or other compensation provided in subsequent years must be the same as that provided in the second year or period and must be provided for no fewer than five renewal years.

Section 45-06-01.1-14. The benefit chart following this section was updated to reflect the new 2010 standardized plan designs and benefits. The chart for 1990

standardized plans has been deleted. The disclosures and detailed plan charts have also been updated to reflect the new 2010 standardized plan designs and benefits.

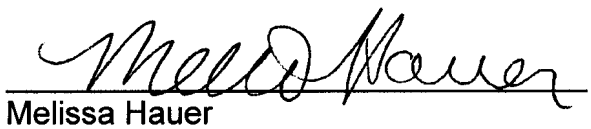
Section 45-06-01.1-20.1. This section was added to conform to the Genetic Information Nondiscrimination Act of 2008 (GINA) and provide that an issuer of a Medicare supplement policy or certificate shall not deny or condition the issuance or effectiveness of a policy on the basis of the genetic information with respect to an individual. It further provides that the issuer shall not discriminate in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual on the basis of the genetic information with respect to such individual. Definitions included here are for the purposes of Section 45-06-01.1-20.1.

These rules are expected to have an impact in excess of $50,000 on the regulated community.

Any interested person may review the text of the proposed rules at, and written comments concerning the proposed rules may be sent to, the following address: North Dakota Insurance Department, 600 East Boulevard Avenue, 5th Floor, Bismarck, ND 58505. The deadline for submission of written comments is April 25, 2009. A copy of the rules and the regulatory analysis may be reviewed on the Department's website at www.nd.gov/ndins or may be requested by telephoning (701) 328-2440.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the North Dakota Insurance Department at the above telephone number or address at least seven days prior to the public hearing.

DATED this 12 day of February, 2009.



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