

STATEMENTS OF POLICY

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 90b]

Medicare Supplement Excess Benefit Policies

The Insurance Department (Department) deletes Chapter 90b (relating to health care practitioners medicare fee control—statement of policy) to read as set forth in Annex A. Since the chapter was issued as a statement of policy and not as regulations, it is not necessary to publish the deletion in proposed form. The statement of policy was announced under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and section 354 of The Insurance Company Law of 1921 (40 P. S. § 477b). The statement of policy provided guidelines for the implementation of section 31 of the Health Care Practitioners Medicare Fee Control Act (act) (35 P. S. § 449.31) which was signed into law on July 10, 1990.

Purpose

The purpose of this notice is to delete Chapter 90b to eliminate an obsolete statement of policy that no longer serves any compelling public interest. The statement of policy was issued on September 7, 1990, as a result of the passage of the act (35 P. S. §§ 449.31—449.36), which was signed into law on July 10, 1990. The act prohibits health care practitioners, primary health facilities and other entities from balance billing patients covered by the Medicare Program. "Balance billing" is defined as charging or collecting from a Medicare patient an amount in excess of the reasonable charge determined by the United States Secretary of Health and Human Services.

Section 90b.1 (relating to Department rate and form approval) advises that the Department would no longer approve rate and form filings for Medicare Supplement policies and certificates that provided benefits in excess of 20% of the approved Medicare reasonable charge. Because the transition period for filing rates and forms under the act is well expired, this section of the statement of policy is unnecessary and does not serve any compelling public interest.

In addition, the Department no longer approves Medicare Supplement policies and certificates under section 354 of The Insurance Company Law of 1921. Section 354 relating to the approval of accident and health forms was repealed insofar as it is inconsistent under The Accident and Health Filing Reform Act (relating to current policyholders and certificateholders; and submission of rate and form filings to conform to the Health Care Practitioners Medicare Fee Control Act (1990-81)), signed into law on December 18, 1996. Accordingly, Chapter 90b has been superseded by a change in the law.

Sections 90b.2 and 90b.3 list transition requirements relating to changes in policy forms and rates. These sections required insurers to allow then current policyholders the opportunity to eliminate excess benefit coverage during the policy term or at the next renewal. The statement of policy further required that insurers and health maintenance organizations make rate and form filings to conform with the act. Reviews under §§ 90b.2 and 90b.3 have not been applicable since 1991, the first year of implementation of the statement of policy. Sections 90b.2 and 90b.3 were transitional guidelines and

are not applicable to any new Medicare Supplement policies being issued in this Commonwealth. Therefore this guidance is obsolete and unnecessary.

Comments regarding the deletion of this statement of policy were solicited from the various trade associations representing the insurance industry, and other Commonwealth agencies. No comments were received.

Fiscal Impact

There will be no fiscal impact as a result of the deletion of this statement of policy.

Paperwork

There will be no impact on paperwork as a result of the deletion of this statement of policy.

Affected Parties

The deletion of these sections will affect all insurers who are licensed to sell Medicare supplement policies and certificates in this Commonwealth.

Effectiveness/Sunset Date

The deletion of the statement of policy will become effective upon publication in the *Pennsylvania Bulletin*. Because the document proposes to delete an obsolete statement of policy, no sunset date has been assigned.

Contact Person

Information regarding this matter may be addressed in writing to Geoffrey Dunaway, Director, Accident and Health Bureau, 1311 Strawberry Square, Harrisburg, PA 17120, (717) 787-0684.

GREGORY S. MARTINO,
Acting Insurance Commissioner

(Editor's Note: The regulations of the Department are amended by deleting a statement of policy in §§ 90b.1—90b.3 to read as set forth in Annex A.)

Fiscal Note: 11-161. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 90b. (Reserved)

§§ 90b.1—90b.3. (Reserved).

[Pa.B. Doc. No. 97-1082. Filed for public inspection July 3, 1997, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 140]

Federal Poverty Income Guidelines for 1997

The Department of Public Welfare (Department) announces the implementation in this Commonwealth of the 1997 Federal Poverty Income Guidelines (FPIGs) which were issued by the Department of Health and Human Services and published at 62 FR 10856 on March 10, 1997.

The FPIGs are the basis for the income eligibility limits for several programs whose regulations are published in 55 Pa. Code and administered by the Department. These programs include the Healthy Beginnings Program for Pregnant Women and Qualified Children, Chapter 140, Subchapter A; the Healthy Horizons Program for the Elderly and Disabled, Chapter 140, Subchapter B; Extended Medical Coverage under the Categorically Needy

Program for AFDC/AFDC-U Related Categories*, Chapter 140, Subchapter C; and Transitional Child Care Programs, Chapter 168.

The percentages for the Healthy Beginnings, Healthy Horizons and Transitional Child Care Programs are set forth as follows:

Persons	100% of FPIG		120% of FPIG		133% of FPIG		185% of FPIG	
	Mo.	Annual	Mo.	Annual	Mo.	Annual	Mo.	Annual
1	\$657	\$7,890	\$789	\$9,468	\$874	\$10,494	\$1,216	\$14,597
2	\$884	\$10,610	\$1,061	\$12,732	\$1,175	\$14,111	\$1,635	\$19,629
3	\$1,110	\$13,330	\$1,333	\$15,996	\$1,477	\$17,729	\$2,055	\$24,661
4	\$1,337	\$16,050	\$1,605	\$19,260	\$1,778	\$21,347	\$2,474	\$29,693
5	\$1,564	\$18,770	\$1,877	\$22,524	\$2,080	\$24,964	\$2,893	\$34,725
6	\$1,790	\$21,490	\$2,149	\$25,788	\$2,381	\$28,582	\$3,313	\$39,757
7	\$2,017	\$24,210	\$2,421	\$29,052	\$2,683	\$32,199	\$3,732	\$44,789
8	\$2,244	\$26,930	\$2,693	\$32,316	\$2,984	\$35,817	\$4,151	\$49,821
Each Additional Person	\$226	\$2,720	\$272	\$3,264	\$301	\$3,618	\$419	\$5,032

These percentages apply as follows:

Healthy Beginnings—

- a. 185% for pregnant women and infants up to 1 year of age.
- b. 133% for children age 1 through 5 years of age; and
- c. 100% for children age 6 and older who were born after September 30, 1983.

Healthy Horizons—

- a. 100% for those persons eligible for the categorically needy and Medicare cost-sharing benefits.
- b. 120% for those persons eligible for the Specified Low-Income Medicare Beneficiaries and Medically Needy Only benefits.

(There are different resource limits for each of these programs.)

Transitional Child Care—185%

Additional information on the specific programs is available at the county assistance offices.

Effective Date

This statement of policy shall take effect upon publication in the *Pennsylvania Bulletin* and apply retroactively to March 10, 1997.

*These categories have been replaced by Temporary Assistance for Needy Families (TANF) related categories but 55 Pa. Code has not yet been revised to reflect this.

FEATHER O. HOUSTON
Secretary

Fiscal Note: 14-NOT-145. No fiscal impact; (8) recommends adoption. Increased costs have been included in estimated caseload projections.

Annex A
TITLE 55. PUBLIC WELFARE
PART II. PUBLIC ASSISTANCE MANUAL
Subpart C. ELIGIBILITY REQUIREMENTS
CHAPTER 140. SPECIAL MA ELIGIBILITY REQUIREMENTS
Subchapter C. ELIGIBILITY PROVISIONS FOR EMC UNDER THE CATEGORICALLY NEEDY PROGRAM FOR AFDC/AFDC-U RELATED CATEGORIES*
APPENDIX A
EXTENDED MEDICAL COVERAGE (EMC) MONTHLY INCOME LIMITS
185% OF THE 1997 FEDERAL POVERTY INCOME GUIDELINES

Family Size	185% of the Federal Poverty Income Guidelines
1	\$1,216
2	\$1,635
3	\$2,055
4	\$2,474
5	\$2,893
6	\$3,313
7	\$3,732
8	\$4,151
Each Additional Person	\$419

*These categories have been replaced by Temporary Assistance for Needy Families (TANF) related categories but 55 Pa. Code has not yet been revised to reflect this.

[Pa.B. Doc. No. 97-1083. Filed for public inspection July 3, 1997, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 9]

Pennsylvania S Corporation Election

The Department of Revenue (Department) has adopted a revised statement of policy under the authority contained in § 3.2 (relating to statements of policy). This statement of policy revises § 9.13 (relating to Pennsylvania S Corporation elections) and shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

The purpose of the statement of policy is to advise the public of the effect of the Pennsylvania S Corporation provisions of Act 7 of 1997 (act). The Department has received numerous inquiries concerning the Department's interpretation of the act. Accordingly, it was determined to be necessary to expedite revisions to the Department's current statement of policy relating to Pennsylvania S Corporations.

The act incorporates many of the Federal S Corporation amendments of the Federal Small Business Job Protection Act of 1996. In general, the act affects the following areas: authorized number of shareholders, types of shareholders, affiliations with other corporations, creation of qualified Subchapter S subsidiaries and reelection of Pennsylvania S Corporation tax treatment after termination of an S election. The revised statement of policy incorporates the Pennsylvania S Corporation amendments of the act. These amendments are retroactive in effect to taxable years beginning on or after January 1, 1997.

Specific questions relating to information provided in this statement of policy may be directed to the Department of Revenue, Office of Chief Counsel, Dept. 281061, Harrisburg, PA 17128-1061.

(*Editor's Note:* The regulations of the Department, 61 Pa. Code Chapter 9, are amended by amending § 9.13 to read as set forth in Annex A, with ellipses referring to the existing text of the statement of policy.)

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-388. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart A. GENERAL PROVISIONS

CHAPTER 9. REVENUE PRONOUNCEMENTS—STATEMENTS OF POLICY

§ 9.13. Pennsylvania S Corporation election.

(a) *Generally.* The shareholders of a corporation which qualifies as a "small corporation" under subsection (b) may elect to be taxed as a Pennsylvania S Corporation. The shareholders' election of Pennsylvania S Corporation status is valid only if all shareholders of record on the day the election is filed sign a consent to the election. If an election is made, each shareholder will be subject to Pennsylvania Personal Income Tax on each shareholder's pro rata share of the S Corporation income, whether distributed or not. For taxable years beginning on or after January 1, 1998, the taxable income of a Pennsylvania S Corporation for corporate net income tax purposes is the

corporation's net recognized built-in gain as determined for Federal income tax purposes under section 1374(d)(2) of the IRC (26 U.S.C.A. § 1374(d)(2)).

(b) *Pennsylvania S Corporation election.* A Pennsylvania S Corporation election may be made by the shareholders of any small corporation that is subject to the Pennsylvania corporate net income tax or that owns directly, or through a wholly owned subsidiary, 100% of the stock of a qualified Subchapter S subsidiary that is subject to the Pennsylvania corporate net income tax. A corporation is a small corporation if it meets all of the following requirements:

(1) The corporation has a valid election in effect under Subchapter S of the IRC of 1986 (26 U.S.C.A. §§ 1361—1379).

(2) The corporation would have qualified as a Federal S Corporation under Subchapter S of the IRC of 1986, as amended to January 1, 1997.

(3) The corporation does not have passive investment income in excess of 25% of its gross receipts.

(c) *Passive investment income.* Passive investment income means gross receipts derived from royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities. Gross receipts from the sale or exchange of stock or securities are taken into account only to the extent of gains therefrom.

* * * * *

(5) For purposes of the passive investment income limitation defined in this subsection, a qualified Subchapter S subsidiary owned by a small corporation may not be treated as a separate corporation. All gross receipts and passive investment income of a qualified Subchapter S subsidiary shall be treated as earned by the parent corporation. In addition, all payments or distributions between the parent corporation and any qualified Subchapter S subsidiaries shall be eliminated for purposes of the passive investment income limitation.

(d) *Form and method of election.*

(1) Except as provided in paragraph (5), a Pennsylvania S Corporation election shall be filed with the Department on Form REV 1640 on or before the 15th day of the third month of the current taxable year to be effective for that year. All shareholders of record on the day the election is filed shall consent to the election by signing either Form Rev 1640 or a separate statement of consent, which may be attached to the Pennsylvania form. The separate consent shall contain the following:

(i) The name, address, Pennsylvania Corporation Tax account (box) number, if applicable, and Federal employer identification number of the corporation.

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(2) The corporation shall attach a schedule to the Pennsylvania S Corporation election identifying the name, address, Pennsylvania Corporation Tax account (box) number, if applicable, and Federal employer identification number of each qualified Subchapter S subsidiary owned by the corporation.

(3) The corporation shall submit a copy of the Federal Notification of Approval with its Pennsylvania S Corporation election. If the corporation's Federal S Corporation election is pending at the time the Pennsylvania S Corporation election is filed, the corporation shall indicate that Federal approval is pending, and shall submit a copy of the Federal approval to the Department within 30 days of receipt.

(4) The Pennsylvania S Corporation election shall be filed with the Department by mailing the original executed Form REV 1640 to the Department by certified mail. The election shall be deemed filed on the date the envelope transmitting the election is postmarked by the United States Postal Service. Presentation of a certified mail receipt issued to the small corporation by the United States Postal Service shall be evidence of the filing of the election on the postmark date indicated on the receipt.

(5) For purposes of implementing the Pennsylvania S Corporation amendments of the act of May 7, 1997 (P. L. ___, No. 7) that are retroactive in effect to taxable years beginning on or after January 1, 1997, a Pennsylvania S Corporation election may be filed with the Department on or before September 15, 1997, to be effective for taxable years that commenced between January 1, 1997, through July 1, 1997. Elections filed with the Department after September 15, 1997, for a corporation that had a taxable year which commenced between January 1, 1997, through July 1, 1997, shall be effective for the following taxable year if the requirements in subsection (b) are met.

(e) *Late elections.* Pennsylvania S Corporation elections filed with the Department after the 15th day of the third month of the current taxable year shall be effective for the following taxable year if the requirements in subsection (b) are met.

(f) *Newly formed and foreign corporations.*

(1) A newly formed corporation may elect Pennsylvania S Corporation tax treatment for its first taxable year in Pennsylvania by filing a Pennsylvania S Corporation election with the Department within 75 days of incorporation. If the corporation does not commence business immediately, the election may be filed within 75 days of the date of first activity to be effective for the corporation's taxable year during which activities were commenced.

(2) A foreign corporation may elect Pennsylvania S Corporation tax treatment for its first taxable year in this Commonwealth by filing a Pennsylvania S Corporation election with the Department within 75 days of the commencement of its first taxable year in this Commonwealth. A foreign corporation's first taxable year in this Commonwealth commences on the date the corporation begins doing business in this Commonwealth and becomes subject to the Corporate Net Income Tax imposed under Article IV of the TRC (72 P. S. §§ 7401—7411).

(g) *Revocation or termination of S status.*

(1) A Pennsylvania S Corporation election may be revoked if shareholders holding more than one-half of the shares of stock of the corporation execute their consent to the revocation.

(i) The portion of the taxable year before the revocation takes effect shall be treated as a short taxable year during which the corporation was an S Corporation.

(ii) The portion of the taxable year after the revocation takes effect shall be treated as a short taxable year during which the corporation is subject to Corporate Net Income Tax.

(2) A Pennsylvania S Corporation election shall be terminated for failure to meet the requirements of subsection (b). The termination applies retroactively to the beginning of the corporation's taxable year.

(3) If a Pennsylvania S Corporation election is revoked by the shareholders under paragraph (1) or terminated

for exceeding the passive investment income limitation, the corporation will not be eligible to be taxed as a Pennsylvania S Corporation until the fifth taxable year after the taxable year for which the revocation or termination was effective.

Example 1: REV, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect since January 1, 1990. The shareholders of REV, Inc. revoke their Pennsylvania S Corporation election effective for the taxable year beginning January 1, 1997. REV, Inc. is not eligible to be taxed as a Pennsylvania S Corporation until the taxable year beginning January 1, 2002.

Example 2: MID REV, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect. The shareholders of MID REV, Inc. revoke their Pennsylvania S Corporation election effective July 1, 1997. MID REV, Inc. will be treated as a Pennsylvania S Corporation for the period from January 1, 1997, through June 30, 1997. MID REV, Inc., will not be treated as a Pennsylvania S Corporation from July 1, 1997, through the remainder of the taxable year. The period from July 1, 1997, through December 31, 1997, shall be treated as a short taxable year for corporate net income tax purposes. MID REV, Inc. is not eligible to be taxed as a Pennsylvania S Corporation until the taxable year beginning January 1, 2002.

Example 3: TERM, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect. 35% of the gross receipts of TERM, Inc. for the taxable year beginning January 1, 1997, are derived from passive investment income. The Pennsylvania S Corporation election of TERM, Inc. is terminated effective for the taxable year beginning January 1, 1997. TERM, Inc. is not eligible to be taxed as a Pennsylvania S Corporation until the taxable year beginning January 1, 2002.

Example 4: FED TERM 1, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect. The Federal S Corporation election of FED TERM 1, Inc. is terminated effective for the taxable year beginning January 1, 1997. The Internal Revenue Service determines that the termination was inadvertent and reinstates the Federal S Corporation election of FED TERM 1, Inc. effective for the taxable year beginning January 1, 1997. The Pennsylvania S Corporation election of FED TERM 1, Inc. is not terminated and FED TERM 1, Inc. will be taxed as a Pennsylvania S Corporation for the taxable year beginning January 1, 1997.

Example 5: FED TERM 2, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect. The Federal S Corporation election of FED TERM 2, Inc. is terminated effective for the taxable year beginning January 1, 1997. The Internal Revenue Service determines that the termination was inadvertent and reinstates the Federal S Corporation election of FED TERM 2, Inc. effective for the taxable year beginning January 1, 1999. The Pennsylvania S Corporation election of FED TERM 2, Inc. is terminated effective for the taxable year beginning January 1, 1997. FED TERM 2, Inc. will not be taxed as a Pennsylvania S Corporation for taxable years beginning on or after January 1, 1997. FED TERM 2, Inc. is not eligible to be taxed as a Pennsylvania S Corporation until the taxable year beginning January 1, 1999. FED TERM 2, Inc. shall file a new Pennsylvania S Corporation election to be taxed as a Pennsylvania S Corporation for taxable years beginning on or after January 1, 1999.

(h) Qualified Subchapter S subsidiaries.

(1) A Pennsylvania S Corporation election filed by the parent Federal S Corporation of a qualified Subchapter S subsidiary shall be effective for the qualified Subchapter S subsidiary. A qualified Subchapter S subsidiary is not required to file a separate Pennsylvania S Corporation election.

(2) A qualified Subchapter S subsidiary is not eligible to elect Pennsylvania S Corporation tax treatment independent of its parent Federal S Corporation. A qualified Subchapter S subsidiary will not receive Pennsylvania S Corporation tax treatment if its parent Federal S Corporation does not have a valid Pennsylvania S Corporation election in effect.

(3) As used in this section, the term "qualified Subchapter S subsidiary" means a corporation that is a qualified Subchapter S subsidiary of a Federal S corporation as determined by the Internal Revenue Service under section 1308(b)(3)(B) of the IRC (26 U.S.C.A. § 1308(b)(3)(B)).

(i) *Instructions.* The Pennsylvania S Corporation tax report instructions provide further explanation of the taxation of Pennsylvania S Corporations and their shareholders.

[Pa.B. Doc. No. 97-1084. Filed for public inspection July 3, 1997, 9:00 a.m.]
