

PROPOSED RULEMAKING

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

[17 PA. CODE CH. 53]

Snowmobile and All-Terrain Vehicle Grants

The Department of Conservation and Natural Resources (Department) proposes to add Chapter 53 (relating to snowmobile and all-terrain vehicle grants) to read as set forth in Annex A.

A. *Effective Date*

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Alex MacDonald, Chief, Trails, Greenways and Statewide Planning Section, Bureau of Recreation and Conservation, Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market St., 5th Floor, P.O. Box 8475, Harrisburg, PA 17105-8475, (717) 772-4586, almacdonal@pa.gov; or Stephen Ekema-Agbaw, Assistant Counsel, Office of Chief Counsel, Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market St., 7th Floor, P.O. Box 8767, Harrisburg, PA 17105-8767, (717) 772-4171, sekema@pa.gov.

C. *Statutory Authority*

Section 313 of the Conservation and Natural Resources Act (71 P.S. § 1340.313) and 75 Pa.C.S. § 7704 (relating to rules and regulations) authorize the Department to promulgate regulations. This proposed rulemaking is mandated by 75 Pa.C.S. § 7706(b.1) (relating to restricted accounts), as added by the act of July 20, 2016 (P.L. 837, No. 97) (Act 97).

D. *Purpose and Background*

The purpose of this proposed rulemaking is to comply with 75 Pa.C.S. § 7706(b.1). The intent of 75 Pa.C.S. § 7706(b.1) is to ensure the equitable distribution of snowmobile and all-terrain vehicle (ATV) funds to the snowmobile or ATV user groups who generated the funds.

Previously, funds generated by both user groups were placed into a single restricted account and could be spent on either snowmobile or ATV riding without consideration for which user groups generated the funds. However, as ATV ridership has grown in recent years, ATV user groups have asked the General Assembly to acknowledge their needs and develop more riding opportunities in this Commonwealth. Thus, Act 97 ensures that ATV funds are directed towards the needs of ATV user groups.

Two restricted accounts for snowmobile and ATV funds are created under Act 97—the ATV Management Restricted Account and the Snowmobile Management Restricted Account. Under Act 97, all moneys generated from ATV activities may only be deposited in the ATV Management Restricted Account and used for ATV projects. Similarly, all moneys generated from snowmobile activities may only be deposited in the Snowmobile Management Restricted Account and used for snowmobile projects. These restricted accounts ensure that moneys generated from ATV activities do not go towards snowmobile activities and vice versa.

Additionally, Act 97 mandates that the Department promulgate regulations to create a program granting money from the restricted accounts for snowmobile and ATV activities. The Department proposes to add Chapter 53 to comply with the mandate in Act 97.

E. *Summary of Regulatory Requirements*

Chapter 53, Subchapter A (relating to general provisions) defines terms used in Chapter 53, states the Department's authority and establishes the criteria for grant applicants to apply and be selected for a grant. Chapter 53, Subchapters B and C (relating to all-terrain vehicle grants; and snowmobile grants) establish the types of applicants and projects eligible for funding.

Chapter 53 codifies the Department's grant program for snowmobile and ATV activities. The program funds grant projects for the planning, acquisition, rehabilitation or development of snowmobile and ATV trails. The program also funds grant projects for equipment, training and educational activities related to snowmobile and ATV use. Municipalities, for-profit organizations and nonprofit organizations are eligible for funding under this program.

F. *Benefits, Costs and Compliance*

Benefits

This proposed rulemaking will benefit grant applicants by affording them the opportunity to apply for grant awards twice a year and by ensuring that ATV moneys are used for ATV projects and snowmobile moneys are used for snowmobile projects.

Compliance costs

This proposed rulemaking will not impose additional compliance costs.

Paperwork requirements

There are no additional paperwork requirements associated with this proposed rulemaking. Grant applicants are already required to complete a grant application to apply for funds. This proposed rulemaking codifies the application process.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 9, 2018, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

H. *Public Comments*

Interested persons are invited to submit comments, suggestions or objections regarding this proposed rulemaking to Alex MacDonald, Chief, Trails, Greenways and Statewide Planning Section, Bureau of Recreation and

Conservation, Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market St., 5th Floor, P.O. Box 8475, Harrisburg, PA 17105-8475. Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Department within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Comments may be submitted by e-mail to the Department at BRCRegulations@pa.gov and must also be received by the Department within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Use "Chapter 53 proposed rulemaking" as the subject line. A return name and United States Postal Service mailing address must be included in each transmission.

CINDY ADAMS DUNN,
Secretary

Fiscal Note: 7B-9. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 17. CONSERVATION AND NATURAL RESOURCES

PART I. DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Subpart E. OUTDOOR RECREATION

CHAPTER 53. SNOWMOBILE AND ALL-TERRAIN VEHICLE GRANTS

Subchap.

- A. GENERAL PROVISIONS
- B. ALL-TERRAIN VEHICLE GRANTS
- C. SNOWMOBILE GRANTS

Subchapter A. GENERAL PROVISIONS

- | | |
|-------|---------------------------------------|
| Sec. | |
| 53.1. | Definitions. |
| 53.2. | Authority. |
| 53.3. | Application procedure. |
| 53.4. | Grant selection process and criteria. |
| 53.5. | Funding levels. |

§ 53.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ATV—An all-terrain vehicle as defined in section 7706(e) of the Vehicle Code (relating to restricted accounts).

ATV Management Restricted Account—A restricted revenue account for funds that may only be used for ATV related activities, or activities related to joint-use trails, as required under section 7706(a)(2) of the Vehicle Code.

Acquisition—The purchase or lease of land or buildings for snowmobile or ATV activities, or both.

Development—Construction, alteration or renovation required for and compatible with the physical improvement of land.

Joint-use trail—A trail that may be used by snowmobiles and ATVs.

Land—Real property, including improvements thereon, rights-of-way, water, riparian and other rights, easements, privileges and any other physical property or rights of interest of any kind or description relating to or connected with real property.

Maintenance—Recurring upkeep needed on a regular basis on snowmobile, ATV or joint-use trails, trail related facilities and equipment.

Municipality—A county, city, borough, incorporated town, township or an official agency created by the foregoing units of government under the laws of the Commonwealth.

Nonprofit organization—An organization that is exempt from income tax under section 501 of the Internal Revenue Code (26 U.S.C.A. § 501).

Project—A proposal to acquire or develop land, research the feasibility of acquiring or developing land, prepare or perform right-of-way lease agreements, purchase or lease equipment, or conduct educational or training programs relating to snowmobile or ATV activities, or both.

Rehabilitation—The improvement or restoration, excluding routine maintenance, of existing snowmobile, ATV or joint-use trails.

Snowmobile—The term as defined in section 7702 of the Vehicle Code (relating to definitions).

Snowmobile Management Restricted Account—A restricted revenue account for funds that may only be used for snowmobile related activities, or activities related to joint-use trails, as required under section 7706(a)(2) of the Vehicle Code.

Vehicle Code—75 Pa.C.S. §§ 101—9701.

§ 53.2. Authority.

This chapter is adopted under section 7706(b.1) of the Vehicle Code (relating to restricted accounts) and applies to municipalities, for-profit organizations and nonprofit organizations seeking grants under this chapter.

§ 53.3. Application procedure.

(a) Grant applicants may apply for grants under this chapter by submitting an application through the Department's online grant portal on the Department's web site.

(b) By completing, signing and submitting a grant application to the Department, the grant applicant will be deemed to have certified to the Department that it shall be legally bound by the terms, conditions and provisions of the grant.

(c) There will be two grant rounds annually during which the Department will accept grant applications. The first grant round will open on the first business day in January and close on the last business day in March. The second grant round will open on the first business day in August and close on the last business day in October.

§ 53.4. Grant selection process and criteria.

(a) Following the closing date of each grant round, the Department will consider properly filed applications for approval and award.

(b) If the Department determines that an application is incomplete and that additional information is necessary, the grant applicant shall provide that additional information to allow for further consideration of the application.

(c) In reviewing an application, the Department will give priority to all of the following criteria:

- (1) The anticipated benefits of the project.
- (2) The local and regional impact of the project.
- (3) The estimated cost of the project.
- (4) The availability of matching funds for the project.
- (5) Cost sharing by the grant applicant and other entities.

(6) The results of similar types of projects that have already been completed.

(7) The results of previous projects completed by the grant applicant.

(8) The Department's priorities for motorized recreational trails.

(d) The Department will complete its review and approval of properly filed applications prior to the opening of the following grant round.

§ 53.5. Funding levels.

Grants under this chapter may cover part or all of the cost of an eligible project.

Subchapter B. ALL-TERRAIN VEHICLE GRANTS

Sec.
53.11. ATV Management Restricted Account.
53.12. Eligibility.

§ 53.11. ATV Management Restricted Account.

(a) The Department may only award grants for ATV projects under this subchapter.

(b) The Department may only fund grants with money from the ATV Management Restricted Account under this subchapter.

(c) Joint-use trail projects are considered ATV projects under this subchapter.

§ 53.12. Eligibility.

(a) The Department may award grants to the following groups and organizations:

- (1) For-profit organizations.
- (2) Nonprofit organizations.
- (3) Municipalities.

(b) The Department may award grants for the following project costs on lands not owned by the Commonwealth:

- (1) Plans, specifications and engineering surveys.
- (2) Fees and costs related to the preparation or performance of right-of-way lease agreements.
- (3) Land acquisition.
- (4) Construction, maintenance and rehabilitation of trails and other facilities for ATVs.

(c) The Department may award grants for the maintenance, rehabilitation or construction of ATV trails on lands owned by the Commonwealth.

(d) The Department may award grants for equipment, training and educational activities relating to ATV use.

Subchapter C. SNOWMOBILE GRANTS

Sec.
53.21. Snowmobile Management Restricted Account.
53.22. Eligibility.

§ 53.21. Snowmobile Management Restricted Account.

(a) The Department may only award grants for snowmobile projects under this subchapter.

(b) The Department may only fund grants with money from the Snowmobile Management Restricted Account under this subchapter.

(c) Joint-use trail projects are considered snowmobile projects under this subchapter.

§ 53.22. Eligibility.

(a) The Department may award grants to the following groups and organizations:

- (1) For-profit organizations.
- (2) Nonprofit organizations.
- (3) Municipalities.

(b) The Department may award grants for the following project costs on lands not owned by the Commonwealth:

- (1) Plans, specifications and engineering surveys.
- (2) Fees and costs related to the preparation or performance of right-of-way lease agreements.
- (3) Land acquisition.
- (4) Construction, maintenance and rehabilitation of trails and other facilities for snowmobiles.

(c) The Department may award grants for the maintenance, rehabilitation or construction of snowmobile trails on lands owned by the Commonwealth.

(d) The Department may award grants for equipment, training and educational activities relating to snowmobile use.

[Pa.B. Doc. No. 18-106. Filed for public inspection January 19, 2018, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 89]

Medicare Supplement Insurance Minimum Standards

The Insurance Department (Department) proposes to amend Chapter 89, Subchapter K (relating to Medicare supplement insurance minimum standards) to read as set forth in Annex A. The rulemaking is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), sections 5 and 9 of the Medicare Supplement Insurance Act (40 P.S. § 3105 and § 3109) and section 314 of the Accident and Health Filing Reform Act (40 P.S. § 3801.314).

Purpose

Chapter 89, Subchapter K sets forth minimum standards for Medicare supplement insurance (Medigap) policies, as well as other requirements that pertain to the sale of Medigap policies, such as limitations on rating practices, requirements to file certain forms, the establishment of open enrollment periods and standards for marketing. Many of these standards are based in large part on Federal requirements. Because Medigap serves as a supplement to Medicare (a program administered exclusively by the Federal government), Medigap is also heavily Federally regulated. The Federal government develops standardized Medigap plans and determines which benefits must be included in each standardized plan type. Only standardized Medigap plans may be sold.

Chapter 89, Subchapter K was amended in 1992 and detailed the minimum benefits that needed to be included in each standardized Medigap plan at that time as required under the Federal Omnibus Budget Reconciliation Act of 1990 (Omnibus Act). In Omnibus Act, the Federal government delineated these standards and, in-

stead of promulgating its own Federal regulation, charged the National Association of Insurance Commissioners (NAIC) with developing a model regulation to be adopted by the states to implement those requirements. See the Omnibus Act (codified as section 1882(p) of the Social Security Act (42 U.S.C.A. § 1395ss(p))).

States currently enjoy primary regulatory authority over the Medigap industry so long as they adopt regulations that are substantially similar to those established by the NAIC to carry out the intent of Congress. See section 1882(a)(2)(A) of the Social Security Act. If a state fails to promulgate a regulation that adopts the changes periodically made by the NAIC to its model regulation in response to new or changed Federal requirements, that state will lose its regulatory authority. See section 1882(b)(2) of the Social Security Act.

In 2015, Congress passed the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub.L. No. 114-10), which mandated certain changes to the benefit structure of the permissible standardized benefit plans for Medigap policies. Again, as in 1992, the NAIC developed amendments that reflect those changes and published the August 29, 2016, amendments to NAIC Model Regulation No. 651.

In this case, the Commonwealth has until January 1, 2020, to adopt the changes to the model regulation. The NAIC recommended that, to provide adequate time for implementation, states seek to amend their regulations prior to December 31, 2017. The changes mandated by Federal law will go into effect regardless of regulatory action by the Commonwealth, and insurers providing Medigap policies will have to comply with new standardized benefit requirements even if this proposed rulemaking is not adopted.

The purpose of this proposed rulemaking is to update the Commonwealth's requirements for Medigap plans in accordance with changes made to NAIC Model Regulation No. 651. In addition to updating the Commonwealth's Medigap regulations to comply with Federal requirements, this proposed rulemaking also establishes an open enrollment period for certain individuals retroactively enrolled in Medicare Part B, and disallows certain attained age rating practices.

A copy of the copyrighted NAIC model regulation was provided to the House Insurance Committee, the Senate Banking and Insurance Committee, the Independent Regulatory Review Commission (IRRC), the Governor's Office of Policy and Planning, the Governor's Office of General Counsel and the Attorney General to assist in their analysis of this proposed rulemaking. Copies of NAIC model regulations are available to the general public by contacting the NAIC.

Explanation of Proposed Regulatory Requirements

Proposed amendments to § 89.772 (relating to definitions) add the term "2020 Standardized Medicare supplement benefit plan" to promote readability of proposed § 89.777c (relating to Standard Medicare supplement benefit plans for 2020 Standardized Medicare supplement benefit plans issued or delivered to individuals newly eligible for Medicare on or after January 1, 2020) and to maintain consistency with previous amendments to Chapter 89, Subchapter K.

Proposed amendments to § 89.777b(f)(7) (relating to Standard Medicare supplement benefit plans for 2010 Standardized Medicare supplement benefit plan policies

or certificates issued or delivered on or after June 1, 2010) allow individuals who were eligible for Medicare Part B prior to January 1, 2020, to enroll in a newly redesignated high deductible Plan G. Proposed amendments to subsection (f)(8)(iii) reflect an editorial change made by the NAIC to the previous model. This section is being retained for transitional purposes.

Proposed § 89.777c specifies standards for policies effective on or after January 1, 2020. Specifically, this section will: prohibit the sale of Medicare Part B deductible plans to individuals who became eligible for Medicare Part B on or after January 1, 2020; redesignate standardized benefit plans C, F and high deductible plan F as standardized benefit plans D, G and high deductible plan G, respectively; and prohibit the sale of standardized Medigap plans C, F and high deductible plan F to individuals who became eligible for Medicare Part B on or after January 1, 2020.

Proposed amendments to § 89.778 (relating to open enrollment) reformat subsection (a). Proposed subsection (a)(1)(ii) prohibits an insurer from denying enrollment in a Medigap plan to an individual who is retroactively determined to be eligible for Medicare Part B by the Social Security Administration solely because of the retroactive eligibility determination. This proposed prohibition would extend for the period of time ending 6 months after the date of the retroactive eligibility determination.

Proposed § 89.781(g) (relating to filing and approval of policies and certificates and premium rates) prohibits the practice referred to as "ladle rating," when, for each year of age attained by an enrollee, the rate decreases until the insured reaches an age at which rates begin to increase significantly each year as age increases. This prohibition was contemplated in the 2008 version of NAIC Model Regulation No. 651, which encouraged states to assess the necessity of a regulatory intervention with respect to attained age rating.

Proposed amendments to § 89.783 (relating to required disclosure provisions) delete outdated language pertaining to disclosures required under subsection (d)(5) in accordance with editorial changes made by the NAIC to the 2008 version of NAIC Model Regulation No. 651. Subsection (d)(6) is proposed to be amended to note the addition of the availability of an Outline of Coverage for Plan N. These proposed amendments also update references to the Department's web site in subsections (d)(6) and (f) to reflect the current URL.

External Comments

The Department circulated pre-exposure drafts of the proposed rulemaking to representatives from the Insurance Federation of Pennsylvania, the Pennsylvania Association of Mutual Insurance Companies, insurance agents and brokers, Highmark, Independence Blue Cross and Capital Blue Cross. No comments were received.

Affected Parties

This proposed rulemaking applies to insurers licensed to transact accident and health business in this Commonwealth. Specifically, this proposed rulemaking applies to those insurers offering Medigap policies.

Fiscal Impact

State government

There will not be a material increase in cost to the Department as a result of this proposed rulemaking.

General public

This proposed rulemaking will not impose costs and will not have a fiscal impact upon the general public.

Political subdivisions

This proposed rulemaking will not impose additional costs on political subdivisions.

Private sector

The insurance industry will likely not incur additional costs associated with complying with this proposed rulemaking.

Paperwork

This proposed rulemaking will not impose additional paperwork on the Department, as no filing is required to be made by insurers. To the extent that insurers would need to update policy forms or enrollee literature, this proposed rulemaking may impose additional paperwork on insurers.

Effective Date

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. Although this proposed rulemaking will be effective upon final-form publication, the benefit standards established by MACRA apply to all policies or certificates issued or delivered on or after January 1, 2020.

Sunset Date

The Department continues to monitor the effectiveness of regulations on a triennial basis. Therefore, a sunset date has not been assigned.

Contact Person

Questions or comments regarding this proposed rulemaking may be addressed in writing to Bridget Burke, Regulatory Coordinator, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, fax (717) 772-1969, bburke@pa.gov within 30 days following the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 9, 2018, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

JESSICA K. ALTMAN,
Acting Insurance Commissioner

Fiscal Note: 11-256. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE

Subchapter K. MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

§ 89.772. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

2010 Standardized Medicare supplement benefit plan—A group or individual policy of Medicare supplement insurance issued on or after June 1, 2010.

2020 Standardized Medicare supplement benefit plan—A group or individual policy or certificate of Medicare supplement insurance issued or delivered on or after January 1, 2020.

Applicant—

* * * * *

§ 89.777b. Standard Medicare supplement benefit plans for 2010 Standardized Medicare supplement benefit plan policies or certificates issued or delivered on or after June 1, 2010.

* * * * *

(f) The make up of 2010 Standardized Medicare supplement benefit plans shall be as follows:

* * * * *

(7) Standardized Medicare supplement benefit Plan G shall include only the following: the basic (core) benefit as defined in § 89.776a(2), plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign county as defined in § 89.776a(3)(i), (iii), (v) and (vi). **Effective January 1, 2020, a standardized benefit plan redesignated as high deductible Plan G under § 89.777c(b)(2)(iv) (relating to Standard Medicare supplement benefit plans for 2020 Standardized Medicare supplement benefit plans issued or delivered to individuals ready eligible for Medicare on or after January 1, 2020) may be offered to an individual who was eligible for Medicare prior to January 1, 2020.**

(8) Standardized Medicare supplement Plan K shall include only the following:

(i) *Part A hospital coinsurance, day 61 through day 90.* Coverage of 100% of the Part A hospital coinsurance amount for each day used from day 61 through day 90 in any Medicare benefit period.

(ii) *Part A hospital coinsurance, day 91 through day 150.* Coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from day 91 through day 150 in any Medicare benefit period.

(iii) *Part A hospitalization after [150 days] lifetime reserve days are exhausted.* On exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the appli-

cable prospective payment system rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

* * * * *

(Editor's Note: The following section is proposed to be added and printed in regular type to enhance readability.)

§ 89.777c. Standard Medicare supplement benefit plans for 2020 Standardized Medicare supplement benefit plans issued or delivered to individuals newly eligible for Medicare on or after January 1, 2020.

(a) *Applicability.*

(1) Except as provided in subsection (d), this section applies to a 2020 Standardized Medicare supplement plan issued or delivered to an individual newly eligible for Medicare on or after January 1, 2020, by reason of:

(i) Attainment of 65 years of age on or after January 1, 2020.

(ii) Entitlement to Medicare Part A benefits under section 226(b) or 226A of the Social Security Act (42 U.S.C.A. §§ 426(b) and 426-1) on or after January 1, 2020.

(iii) Entitlement to benefits under section 226(a) of the Social Security Act on or after January 1, 2020.

(2) Benefit plan standards applicable to a Medicare supplement policy and plan policy or certificate issued or delivered to individuals eligible for Medicare before January 1, 2020, remain subject to § 89.777b (relating to Standard Medicare supplement benefit plans for 2010 Standardized Medicare supplement benefit plan policies or certificates issued or delivered on or after June 1, 2010).

(b) *Benefit requirements.* A 2020 Standardized Medicare supplement benefit plan that is advertised, solicited, delivered or issued for delivery in this Commonwealth to an individual newly eligible for Medicare as set forth in subsection (a)(1):

(1) May not provide coverage of the Medicare Part B deductible.

(2) Must meet the standards and requirements of § 89.777b except that:

(i) Standardized Medicare supplement benefit Plan C is redesignated as Plan D and must provide the benefits in § 89.777b(f)(3) but may not provide coverage for any portion of the Medicare Part B deductible.

(ii) Standardized Medicare supplement benefit Plan F is redesignated as Plan G and must provide the benefits in § 89.777b(f)(5) but may not provide coverage for any portion of the Medicare Part B deductible.

(iii) Standardized Medicare supplement benefit Plans C, F and high deductible Plan F may not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

(iv) Standardized Medicare supplement benefit high deductible Plan F is redesignated as high deductible Plan G and must provide the benefits in § 89.777b(f)(6) but may not provide coverage for any portion of the Medicare Part B deductible. The Medicare Part B deductible paid by a beneficiary enrolled in a Standardized Medicare supplement benefit high deductible Plan F plan shall be

considered an out-of-pocket expense for purposes of meeting the annual high deductible.

(v) For purposes of this section, the references to Plans C and F in § 89.777b(b)(2) are deemed to be references to Plans D and G, respectively.

(c) *Guaranteed issue for eligible persons.* For purposes of § 89.790(e) (relating to guaranteed issued for eligible persons), in the case of an individual newly eligible for Medicare on or after January 1, 2020, any reference to a standardized Medicare supplement benefit policy classified as Plan C, F or high deductible Plan F is deemed to be a reference to a standardized Medicare supplement benefit Plan D, G or high deductible Plan G, respectively, that meets the requirements of this subsection and subsection (d).

(d) *Offer of redesignated plans to individuals other than those newly eligible.* On or after January 1, 2020, a standardized Medicare supplement benefit plan described in subsection (b)(2)(iv) may be offered to an individual who was eligible for Medicare prior to January 1, 2020, under § 89.777b(f)(7).

§ 89.778. Open enrollment.

(a) Prohibitions regarding denial, issuance and pricing of Medicare supplement policies or certificates.

(1) An issuer may not deny or condition the issuance or effectiveness of a Medicare supplement policy or certificate available for sale in this Commonwealth, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the 6-month period beginning with the first day of the first month in which [**an**] **either of the following occurs:**

(i) **An individual enrolled for benefits under Medicare Part B.**

(ii) **An applicant who is retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration received notice of retroactive eligibility to enroll.**

(2) Each Medicare supplement policy and certificate currently available from an issuer shall be made available to applicants who qualify under this subsection without regard to age. In the case of group policies, an issuer may condition issuance on whether an applicant is a member or is eligible for membership in the insured group.

(b) **Exclusion of benefits based on a pre-existing condition prohibited.** If an applicant qualifies under subsection (a) and submits an application during the time period referenced in subsection (a) and, as of the date of application, has had a continuous period of creditable coverage of at least 6 months, the issuer may not exclude benefits based on a preexisting condition.

(c) **Reduction of the period of a pre-existing condition exclusion.** If the applicant qualifies under subsection (a) and submits an application during the time period referenced in subsection (a) and, as of the date of application, has had a continuous period of creditable coverage that is less than 6 months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The HHS Secretary shall specify the manner of the reduction under this subsection.

(d) ***Prevention of the exclusion of benefits under a policy.*** Except as provided in subsections (b) and (c) and §§ 89.789 and 89.790 (relating to prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies or certificates; and [**guarantee**] **guaranteed** issue for eligible persons), subsection (a) will not be construed as preventing the exclusion of benefits under a policy, during the first 6 months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the 6 months before it became effective.

§ 89.781. Filing and approval of policies and certificates and premium rates.

* * * * *

(f) *Combination of forms.*

(1) Except as provided in paragraph (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in § 89.780 (relating to loss ratio standards and refund or credit of premium).

(2) Forms assumed under an assumption reinsurance agreement may not be combined with the experience of other forms for purposes of the refund or credit calculation.

(g) *Attained age rating.* An issuer may not present for filing or approval a rate structure for a Medicare supplement policy or certificate issued or delivered after _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) based upon a structure or methodology with any grouping of attained ages greater than 1 year. The rate for successive ages may not decrease as age increases.

§ 89.783. Required disclosure provisions.

* * * * *

(d) *Outline of coverage requirements for Medicare supplement policies.*

* * * * *

(5) The following items [**shall**] **must** be included in the outline of coverage in the order required in this paragraph:

PREMIUM INFORMATION
(Boldface Type)

We (insert issuer's name) can only raise your premium if we raise the premium for all policies like yours in this

Commonwealth. (If the premium is based on the increasing age of the insured, include information specifying when premiums will change.)

[DISCLOSURES
(Boldface Type)

Use this outline to compare benefits and premiums among policies.

This outline shows benefits and premiums of policies sold for effective dates on or after June 1, 2010. Policies sold for effective dates prior to June 1, 2010, have different benefits and premiums. Plans E, H, I and J are no longer available for sale. (This paragraph may not appear after June 1, 2011.)]

READ YOUR POLICY VERY CAREFULLY
(Boldface Type)

* * * * *

(6) The cover page and the accompanying charts for Plan A to Plan [**L**] **N** of the Outlines of Coverage are available upon request from the Department in printed and electronic formats. In addition, notice will be published, in the *Pennsylvania Bulletin*, of the availability of the amended outlines when revisions are made available to the Department by the United States Department of Health and Human Services as published in the *Federal Register*. The Outlines of Coverages will be made available on the Department's web site at [**http://www.ins.state.pa.us**] **www.insurance.pa.gov**.

* * * * *

(f) *Availability of forms.* Applicable forms relating to Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare, Refund Calculations and Reporting of Duplicate Medicare Policies for Medicare Supplement Chapter 89 are available upon request from the Department in printed and electronic formats. In addition, notice will be published, in the *Pennsylvania Bulletin*, of the availability of amended Medicare Supplement forms when revisions are made. These Medicare Supplement forms will be made available on the Department's web site at [**http://www.insurance.state.pa.us**] **www.insurance.pa.gov**.

[Pa.B. Doc. No. 18-107. Filed for public inspection January 19, 2018, 9:00 a.m.]