LEGISLATIVE BILL 998

Approved by the Governor April 11, 1988

Introduced by Banking, Commerce & Insurance Committee, Remmers, 1, Chairperson; Conway, 17; Weihing, 48; Schmit, 23; Goodrich, 20; Lynch, 13; Haberman, 44

AN ACT relating to the Medicare Supplement Insurance Minimum Standards Act; to amend sections 44-710.18, 44-3601, and 44-3605 to 44-3611, Reissue Revised Statutes of Nebraska, 1943, sections 44-3602 to 44-3604, Revised Statutes Supplement, 1986, and section 44-4503, Revised Statutes Supplement, 1987; to rename the act; to define and redefine terms; to provide applicability; to provide for rules and regulations; to provide policy standards; to provide filing requirements; to provide disclosure standards; to provide for forms of certain policies; to provide for enforcement; to eliminate certain provisions of the act; to harmonize provisions; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 44-710.18, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-710.18. Except as provided in section ~~44-3609~~ 44-3608, every individual sickness and accident policy hereinafter issued, except single premium nonrenewable policies, shall have printed on its face or attached thereto a notice stating in substance that the person to whom the policy is issued shall be permitted to return the policy within ten days of its delivery to the purchaser and to have the premium paid refunded if, after examination of the policy, the purchaser is not satisfied with it for any reason. If a policyholder or a purchaser pursuant to such notice, returns the policy to the insurer at its home office or branch office or to the agent or agency through which it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued.

Sec. 2. That section 44-3601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3601. The purpose of the Medicare Supplement Insurance Minimum Standards Act ~~sections 44-3601 to 44-3611~~ shall be to provide reasonable standardization and simplification of terms and coverages of group or individual ~~Medicare~~ medicare supplement sickness and accident insurance policies~~, group or individual limited sickness and accident indemnity insurance policies,~~ and group or individual ~~Medicare~~ medicare supplement subscriber contracts issued by insurance companies, nonprofit hospital and medical service associations, and health maintenance organizations, to facilitate public understanding and comparison, to eliminate provisions contained in such policies and contracts which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such coverages.

Sec. 3. That section 44-3602, Revised Statutes Supplement, 1986, be amended to read as follows:

44-3602. As used in the Medicare Supplement ~~and Sickness and Accident~~ Insurance Minimum Standards Act, unless the context otherwise requires:

(1) Applicant shall mean:

(a) In the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder;

(2) ~~(1)~~ Policy shall mean the entire contract between the insurer and the insured, including the policy riders, endorsements, and the application, if attached, and shall also ~~includes~~ include subscriber contracts issued by nonprofit hospital and medical service associations and by health maintenance organizations;

(3) ~~(2)~~ Certificate shall mean any certificate issued under a group medicare supplement policy or subscriber contract, which certificate ~~group limited accident and sickness indemnity insurance policy, which policy~~ has been delivered or issued for delivery in this state;

(4) ~~(3)~~ Medicare shall mean the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted ~~and~~ or later amended;

(5) ~~(4)~~ Medicare supplement policy shall mean

a group or individual policy ~~which is designed to supplement Medicare substantially or in part, or is advertised, marketed, or otherwise purported to be a supplement to Medicare and which meets the requirements of the Medicare Supplement and Sickness and Accident Insurance Minimum Standards Act and of rules and regulations authorized by such act applicable to any such policy or certificate sold to a person eligible for Medicare by reason of age, except that such term does not include:~~

~~(a)~~ A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations;

~~(b)~~ A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation, has been maintained in good faith for purposes other than obtaining insurance, and has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members, or

~~(c)~~ Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of the Medicare Supplement and Sickness and Accident Insurance Minimum Standards Act;

~~(5)~~ Format shall mean style, arrangement, and overall appearance including, but not limited to, such items as the size, color, and prominence of type, and the arrangement of text and captions; of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare by reason of age;

(6) Director shall mean the Director of Insurance; and

(7) Department shall mean the Department of Insurance. ;

~~(8)~~ Medicare benefit period shall mean the

unit of time used in the Medicare program to measure use of services and availability of benefits under Part A, Medicare hospital insurance;

(9) Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare to the extent recognized as reasonable under Medicare;

(10) Direct response insurance shall mean insurance issued to an applicant who has completed the application and forwarded it directly to the insurer in response to a solicitation coming into the applicant's possession by any means of mass communication, including the United States mail; and

(11) Limited indemnity policy shall mean any group or individual accident and sickness policy, other than a Medicare supplement policy, which is issued to persons eligible for Medicare by reason of age and which is primarily designed to provide (a) hospital confinement indemnity coverage, (b) specified disease coverage, or (c) coverage for confinement in skilled nursing facilities, all intermediate care facilities, residential care facilities, or domiciliary care facilities as defined in section 71-2017.01.

Sec. 4. That section 44-3603, Revised Statutes Supplement, 1986, be amended to read as follows:

44-3603. The department shall adopt and promulgate rules and regulations to establish specific standards, including standards for full and fair disclosure, that set forth the format, manner, content, and required disclosure for the sale of group or individual Medicare supplement policies and group or individual limited indemnity policies providing coverage of persons eligible for Medicare by reason of age.

(1) Such standards shall be in addition to and in accordance with applicable laws of this state, including sections 44-710.01 to 44-710.19, and shall cover, but shall not be limited to:

(a) Terms of renewability, which shall provide that the policy may not be canceled or not renewed by the insurer solely on the grounds of deterioration of health;

(b) Nonduplication of coverage;

(c) Initial and subsequent conditions of eligibility;

(d) Preexisting conditions;

(e) Probationary periods;

(f) Limitations, exceptions, and reductions which shall not include those which are more restrictive than those of Medicare for any type of care covered

~~under the policy;~~

~~(g) Elimination periods;~~

~~(h) Requirements for replacement;~~

~~(i) Recurrent conditions; and~~

~~(j) Definition of terms, including, but not limited to, the following: Hospital, accident, sickness, injury, physician, accidental means, guaranteed renewable, skilled nursing facility, and any other terms not adequately defined in the Medicare Supplement and Sickness and Accident Insurance Minimum Standards Act or other terms for which the department deems a definition necessary.~~

~~(2) Such standards shall specify prohibited policy provisions not otherwise specifically authorized by statute which in the opinion of the department are unjust, unfair, or unfairly discriminatory to the policyholder, any person insured under the policy, or beneficiary.~~

~~(3) Such coverage shall not indemnify against losses resulting from sickness on a less favorable basis than losses resulting from accidents.~~

~~(4) Such coverage shall provide that benefits designed to cover cost-sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be changed to correspond with such changes subject to subsection (3) of section 44-3604.~~ Except as otherwise specifically provided, the Medicare Supplement Insurance Minimum Standards Act shall apply to:

(1) All medicare supplement policies and subscriber contracts delivered or issued for delivery in this state on or after the effective date of this act; and

(2) All certificates issued under group medicare supplement policies or subscriber contracts, which certificates have been delivered or issued for delivery in this state.

The act shall not be intended to prohibit or apply to insurance policies or health care benefit plans, including group conversion policies, provided to medicare eligible persons, which policies or plans are not marketed or held to be medicare supplement policies or benefit plans.

Sec. 5. That section 44-3604, Revised Statutes Supplement, 1986, be amended to read as follows:

44-3604. ~~(1) The department may adopt and promulgate rules and regulations in addition to those~~

provided in this section to establish minimum standards for benefits for group or individual Medicare supplement policies or group or individual limited indemnity policies, other than conversion policies issued pursuant to a contractual conversion privilege under a group or individual policy when such group or individual policy contains provisions which are inconsistent with the requirements of the Medicare Supplement and Sickness and Accident Insurance Minimum Standards Act. No group or individual Medicare supplement policy shall be delivered or issued for delivery in this state which does not meet the following minimum benefit standards, but such minimum benefit standards shall not preclude the inclusion of other provisions or benefits which are not inconsistent with these minimum benefit standards:

(a) Daily coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Part A Medicare for each day from the sixty-first day through the ninetieth day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(c) Upon exhaustion of all Medicare hospital inpatient coverages including the lifetime reserve days, coverage of ninety percent of all Part A Medicare eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional three hundred sixty-five days; and

(d) Coverage of twenty percent of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of two hundred dollars of such expenses and to a maximum benefit of at least five thousand dollars per calendar year.

(2) If coverage is not provided for Part A Medicare eligible expenses incurred in an amount equal to the amount deductible under Medicare for skilled nursing care in a skilled nursing facility from the twenty-first day through the one hundredth day of such care for any benefit period, that fact shall be disclosed in writing to any prospective insured in (a) the application for such policy, (b) the outline of coverage for such policy provided pursuant to section 44-3605, and (c) the policy itself.

(3) The premium rates charged for group or individual Medicare supplement policies and group or individual limited indemnity policies shall be subject to section 44-710. The department shall prescribe by

~~rule and regulation minimum loss ratios applicable to the premium rates for group and individual Medicare supplement policies and group and individual limited indemnity policies.~~

~~(4) The department shall prescribe the method of identification of group or individual Medicare supplement policies and group or individual limited indemnity policies based on coverages provided. In no event shall any policy of insurance not meeting the provisions of subsection (1) of this section be advertised, marketed, or sold as a group or individual Medicare supplement insurance policy.~~ (1) The director shall adopt and promulgate reasonable rules and regulations to establish specific standards for policy provisions of medicare supplement policies and certificates. Such standards shall be in addition to and in accordance with applicable laws of this state. No requirement of Chapter 44 relating to minimum required policy benefits, other than the minimum standards contained in the Medicare Supplement Insurance Minimum Standards Act, shall apply to medicare supplement policies. The standards may include, but shall not be limited to:

(a) Terms of renewability;

(b) Initial and subsequent conditions of eligibility;

(c) Nonduplication of coverage;

(d) Probationary periods;

(e) Benefit limitations, exceptions, and reductions;

(f) Elimination periods;

(g) Requirements for replacement;

(h) Recurrent conditions; and

(i) Definitions of terms.

(2) The director may adopt and promulgate reasonable rules and regulations which specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the director, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(3) Notwithstanding subdivision (2)(b) of section 44-710.03 or any other provision of law, a medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received

from a physician within six months before the effective date of coverage.

Sec. 6. That section 44-3605, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3605. The director shall adopt and promulgate reasonable rules and regulations to establish minimum standards for benefits under medicare supplement policies. ~~(1) In order to provide for full and fair disclosure in the sale of group or individual Medicare supplement policies, no such policy shall be delivered or issued for delivery in this state and no certificate shall be delivered pursuant to a group Medicare supplement policy delivered or issued for delivery in this state unless the outline of coverage described in subsection (2) of this section is delivered to the applicant at the time application is made. In the event the policy or certificate is issued on a basis other than that applied for, the outline of coverage properly describing the policy must accompany the policy when it is delivered and clearly state that it is not the policy or contract for which application was made.~~

~~(2) The department shall prescribe by rules and regulations the format and content of the outline of coverage required by subsection (1) of this section. Such outline of coverage shall include, but not be limited to:~~

~~(a) A description of the principal benefits and coverage provided in the policy;~~

~~(b) A statement of the exceptions, reductions, and limitations contained in the policy;~~

~~(c) A statement of the renewal provisions including any reservation by the insurer of a right to change premiums;~~

~~(d) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions; and~~

~~(e) A standard policy check list disclosure form for group or individual Medicare supplement policies, designed to adequately inform the prospective insured of the need for and extent of coverage offered as group or individual Medicare supplement coverage.~~

~~(3) In order to provide for full and fair disclosure in the sale of group or individual limited indemnity policies, the department shall prescribe by rules and regulations the format, content, and implementation of any disclosure statements and outlines of coverage.~~

~~(4) The department shall further prescribe by rules and regulations a standard form and the contents of an informational brochure for persons eligible for Medicare by reason of age, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the department shall require by rule and regulation that the informational brochure be provided to any prospective insured eligible for Medicare by reason of age concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the department shall require by rule and regulation that the prescribed brochure must be provided to any prospective insured eligible for Medicare by reason of age upon request, but in no event later than the time of policy delivery.~~

Sec. 7. That section 44-3606, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3606. (1) Every insurer providing group medicare supplement insurance benefits to a resident of this state shall file a copy of the master policy and any certificate used in this state in accordance with the filing requirements and procedures applicable to group medicare supplement policies issued in this state, except that no insurer shall be required to make a filing earlier than thirty days after insurance was provided to a resident of this state under a master policy issued for delivery outside this state.

(2) Medicare supplement policies shall return to policyholders benefits which are reasonable in relation to the premium charged. The director shall adopt and promulgate reasonable rules and regulations to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience and earned premiums in accordance with accepted actuarial principles and practices. Every entity providing medicare supplement policies or certificates in this state shall file annually its rates, rating schedule, and supporting documentation demonstrating that it is in compliance with the applicable loss-ratio standards of this state. All filings of rates and rating schedules shall demonstrate that the actual and expected losses in relation to premiums comply with the requirements of the Medicare Supplement Insurance Minimum Standards Act.

(3) No entity shall provide compensation to its agents or other producers which is greater than the

renewal compensation which would have been paid on an existing policy if the existing policy is replaced by another policy with the same company when the new policy benefits are substantially similar to the benefits under the old policy and the old policy was issued by the same insurer or insurer group. ~~Notwithstanding subdivision (2)(b) of section 44-710.03, preexisting condition limitations for group or individual Medicare supplement policies and policies described in subdivision (11)(c) of section 44-3602 shall not exclude coverage for more than six months after the effective date of coverage under the policy for a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.~~

Sec. 8. That section 44-3607, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3607. (1) In order to provide for full and fair disclosure in the sale of medicare supplement policies, no medicare supplement policy or certificate shall be delivered in this state unless an outline of coverage is delivered to the applicant at the time the application is made.

(2) The director shall prescribe the format and content of the outline of coverage required by subsection (1) of this section. As used in this section, format shall mean style, arrangements, and overall appearance, including, but not limited to, the size, color, and prominence of type and arrangement of text and captions. Such outline of coverage shall include:

(a) A description of the principal benefits and coverage provided in the policy;

(b) A statement of the exceptions, reductions, and limitations contained in the policy;

(c) A statement of the renewal provisions, including any reservation by the insurer of a right to change premiums; and

(d) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(3) The director may prescribe by rule and regulation a standard form and the contents of an informational brochure for persons eligible for medicare by reason of age which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare.

Except in the case of direct-response insurance policies, the director may require by rule and regulation that the information brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct-response insurance policies, the director may require by rule and regulation that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare by reason of age but in no event later than the time of policy delivery.

(4) The director may adopt and promulgate rules and regulations for captions or notice requirements determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages for all accident and sickness insurance policies sold to persons eligible for medicare by reason of age, other than:

(a) Medicare supplement policies;

(b) Disability income policies;

(c) Basic, catastrophic, or major medical expense policies; and

(d) Single premium, nonrenewable policies.

(5) The director may further adopt and promulgate reasonable rules and regulations to govern the full and fair disclosure of the information in connection with the addition to or replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for medicare by reason of age. ~~The department shall adopt and promulgate rules and regulations to establish standards for the contents and format of a form that shall (1) contain a question or a reference to a question in the application to elicit information from and provide disclosure to the applicant as to whether the group or individual Medicare supplement insurance or the group or individual limited indemnity insurance to be issued is in addition to any group or individual Medicare supplement insurance or group or individual limited indemnity insurance presently in force and (2) give notice and disclosure to an applicant regarding the replacement of group or individual Medicare supplement insurance or group or individual limited indemnity insurance. Such form shall be dated and duly signed by the insurer or its agent and the applicant at the time application is made.~~

Sec. 9. That section 44-3608, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3608. Notwithstanding the ten-day policy return limitation provided in section 44-710.18, medicare supplement policies or certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the insurer in a timely manner. ~~A copy of the form required by section 44-3607 shall be retained at the general office of the insurer for the period during which files are required to be retained for examination purposes. With respect to direct response insurance policies, such information and disclosure form must be provided no later than the time for policy delivery.~~

Sec. 10. That section 44-3609, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3609. ~~Notwithstanding the ten-day policy return limitation provided in section 44-710.18, every group or individual Medicare supplement, group or individual limited indemnity, or other policy or certificate subject to sections 44-3601 to 44-3611, which is issued after December 31, 1980, shall have printed on its face or attached thereto a notice stating in substance that the person to whom the policy or certificate is issued shall be permitted to return the policy within thirty days of its delivery to the purchaser and to have the premium paid refunded if, after examination of the policy or certificate, the purchaser is not satisfied with it for any reason. If a policyholder or a purchaser pursuant to such notice returns the policy or certificate to the insurer at its home office or branch office or to the agent or agency through which it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy or certificate had been issued~~ Rules and regulations adopted and promulgated pursuant to the Medicare Supplement Insurance Minimum Standards Act shall be subject to the Administrative Procedure Act.

Sec. 11. That section 44-3610, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3610. A violation of any provision of the

Medicare Supplement Insurance Minimum Standards Act ~~sections 44-3601 to 44-3611~~ or any rule and regulation adopted and promulgated pursuant to such act ~~sections 44-3601 to 44-3611~~ shall be an unfair method of competition or an unfair or deceptive act or practice subject to ~~the provisions of~~ section 44-1529.

In addition to any other applicable penalties for violations of Chapter 44, the director may require insurers violating any provision of the act or any rule or regulation adopted and promulgated pursuant to the act to cease marketing any medicare supplement policy or certificate in this state which is related directly or indirectly to a violation or may require such insurer to take such actions as are necessary to comply with the act, or both.

Sec. 12. That section 44-3611, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3611. Sections 44-3601 to 44-3611 shall be known and may be cited as the Medicare Supplement ~~and Sickness and Accident~~ Insurance Minimum Standards Act.

Sec. 13. That section 44-4503, Revised Statutes Supplement, 1987, be amended to read as follows:

44-4503. The Long-Term-Care Insurance Act shall apply to policies delivered or issued for delivery in this state on or after May 30, 1987, and shall not supersede the obligation of entities subject to the act to comply with the provisions of Chapter 44 insofar as such provisions do not conflict with the Long-Term-Care Insurance Act, except that the Medicare Supplement ~~and Sickness and Accident~~ Insurance Minimum Standards Act shall not apply to long-term-care insurance. A policy which is not advertised, marketed, or offered as long-term-care insurance shall not be required to meet the requirements of the Long-Term-Care Insurance Act.

Sec. 14. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 15. That original sections 44-710.18, 44-3601, and 44-3605 to 44-3611, Reissue Revised Statutes of Nebraska, 1943, sections 44-3602 to 44-3604, Revised Statutes Supplement, 1986, and section 44-4503, Revised Statutes Supplement, 1987, are repealed.