

**DEPARTMENT OF INSURANCE**

ADMINISTRATION & LICENSING SERVICES BRANCH  
PRODUCER LICENSING BUREAU, EDUCATION SECTION  
320 CAPITOL MALL  
SACRAMENTO, CA 95814  
(916) 492-3064  
(916) 323-6851 (FAX)  
www.insurance.ca.gov

**NOTICE**

**TO:** Insurers, Agents, Brokers and Other Interested Parties

**DATE:** February 24, 2010

**SUBJECT: New Laws for Medicare Supplement Insurance “Medigap”**

The federal Medicare Improvements for Patients and Providers Act of 2008 (P.L. 110-275) required states to adopt certain changes to Medicare Supplement insurance policies. These changes became law in California on July 2, 2009 when Assembly Bill 1543 (Chapter 10, Statutes of 2009) was signed.

Medicare Supplement insurance, sometimes known as “Medigap” insurance, may be purchased by anyone enrolled in Medicare. Medigap Plans are designed to cover some of the out-of-pocket expenses that people have to pay when using their Medicare benefits.

Under the new law, all of the Medigap Plans have been revised; some of the lettered plans were changed, some were dropped and some new ones were added. **These new Medigap Plans will not take effect until June 1, 2010—but agents may advertise and market the new Plans prior to that date.**

**Q: What laws regulate the sale of Medigap insurance and the people who sell it?**

**A:** California Insurance Code (CIC) sections 10192.1-10192.24 set out the laws regarding Medicare Supplement policies. These sections include, but are not limited to, agent and insurer conduct regarding policy purchase and replacements, policy requirements and prohibitions, plans, claims handling, commissions, penalties, disclosures, advertisements, and marketing, to name a few. All agents marketing and selling Medicare insurance products should be well versed in the changes to these laws and the standards (roles, responsibilities and ethical duties) under which the agents must operate.

**Q: What are the standards for insurance agents selling the new Medigap Plans to seniors?**

**A:** Section 10192.55 of the CIC states: “With regard to Medicare supplement policies, all insurers, brokers, agents, and others engaged in the business of insurance owe a policyholder or a prospective policyholder a duty of honesty, and a duty of good faith and fair dealing.” In order to fulfill this obligation, licensed insurance agents selling Medigap policies must fully understand the changes to Medigap insurance, the options available, and the appropriateness of any policy replacements.

Seniors will be receiving vast amounts of information in the coming months about the changes to Medigap insurance and the new Medigap Plans that will be available. Insurance agents who sold Medigap Plans to seniors in the past will likely be contacted by these seniors with questions about the changes. **The agent’s role in helping seniors understand the changes in order to make an informed decision about whether to change Plans or continue with their current Plan is very important.**

**Q: What changes did the new law make to Medigap Plans?**

**A:** The following changes were made to Medigap Plans and will become effective June 1, 2010:

- Two new Medigap Plans were added, Plans M and N, with new cost sharing rules.
- Hospice benefit was added to the basic benefits of Plans A through D and Plans F and G (Plan E will no longer be available).
- Benefits for excess charges in Plan G were increased to 100%.
- Medigap Plans E, H, I, and J, including high-deductible Plan J, were dropped.
- Preventive Care benefits were dropped from all Plans because Medicare now covers many of these benefits.
- Home Recovery benefit was dropped from all Plans due to underuse.

**Q: What other changes did the new law make to Medigap?**

**A:** The following changes were made to Medigap rules that require companies to issue a Medigap policy without health screening and without a new waiting period limitation:

- "Guaranteed issue" coverage now includes the right to buy a Medigap policy without health screenings or a new waiting period when an employer stops providing insurance that covers all of the cost for Medicare's 20% co-insurance.
- "Open enrollment" rights have been extended to include COBRA and CalCOBRA when this extension of employer coverage is lost, or when a person is only eligible for "Medi-Cal with a share of cost" because of an increase in their income or assets.
- When a person is entitled to "guaranteed issue" coverage or is applying under "open enrollment" rights, insurance companies cannot request, require or obtain medical information as part of the application process. The one exception to this rule occurs when a person is first enrolled in Medicare Part B; an insurance company can require answers to health questions as part of the application for a Medigap policy.

**Q: What is the "Birthday Rule" and how does it apply to the new Medigap Plans?**

**A:** If a person already has Medigap insurance, they have 30 days of "open enrollment" following their birthday each year when they may buy a new Medigap policy without a medical screening or a new waiting period. The new policy must have the same or lesser benefits as the old policy. To avoid confusion, the new law specifies which of the new Plans are equal to the old Plans.

**Q: Does an existing Medigap policyholder need to buy one of the new Medigap Plans?**

**A:** No. If the person is satisfied with their current Medigap Plan, he/she can keep it as long as the premiums are paid. Agents should only recommend the purchase of a new Medigap Plan if the old Plan no longer meets the insured's needs or the premium is too high and he/she can buy a new Plan that meets his/her needs with a lower premium.

**Q: What happens to the Medigap Plans people already have or buy before June 1, 2010?**

**A:** Nothing happens to them. A Medigap Plan is guaranteed renewable for as long as the person wants to keep it and the premiums are paid. As long as the current Medigap policy is kept, the benefits will stay the same regardless of the changes to the law.

**Q: Where can I get more information?**

**A:** Information is available from many sources including: 1-800-MEDICARE (1-800-633-4227) or visit [www.medicare.gov](http://www.medicare.gov) ; Agent/Broker trade associations; and the Dept. of Insurance website at: [www.insurance.ca.gov](http://www.insurance.ca.gov) .