



AMERICAN ACADEMY *of* ACTUARIES

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March 2, 2010

Linda Ziegler and Dalora Schafer  
Co-Chairs, Medicare Supplement Compliance Manual Subgroup  
NAIC Accident and Health Working Group of the Life and Health Actuarial Task Force

Subject: Draft revisions to the Medicare Supplement Compliance Manual

Dear Linda and Dalora:

In our letter of February 2, 2010, The American Academy of Actuaries'<sup>1</sup> Medicare Supplement Work Group (“work group”) provided the following suggestion regarding pooling of Medicare Supplement policy forms:

Annual filings and rate increase filings are meant to demonstrate compliance with loss ratio standards. Federal law specifies that those standards apply at the policy form level. Pooling should not prevent rate adjustments by policy form necessary to achieve compliance with loss ratio standards. That is, if the pooled experience suggests a rate increase of 10%, yet one policy form within the pool does not meet the loss ratio standards, a different, lesser increase should be allowed for that policy form alone.

Our intent with this language was to obtain clarification as to the intent of the pooling approach your group has suggested and how it may interact with loss ratio standards, as we understand them, not to dispute how loss ratio standards were to be applied. In any case, as explanation of our reference to federal law in the above language, in this letter we provide the sources we have relied upon to conclude that federal law state that loss ratio standards apply at the policy form level.

The Social Security Act (Title XVIII Health Insurance for the Aged and Disabled, Section 1882 – Certification of Medicare Supplemental Health Insurance Policies) defines a Medicare supplemental policy in subsection (g)(1):

(g)(1) For purposes of this section, a Medicare supplemental policy is a health insurance policy or other health benefit plan offered by a private entity to

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<sup>1</sup> The American Academy of Actuaries is a professional association with over 16,000 members, whose mission is to assist public policymakers by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

individuals who are entitled to have payment made under this title, which provides reimbursement for expenses incurred for services and items for which payment may be made under this title but which are not reimbursable by reason of the applicability of deductibles, coinsurance amounts, or other limitations imposed pursuant to this title...

Subsection (r) (1) specifies the minimum standard for loss ratios (absent a higher standard in a state as allowed in Subsection (r) (3)):

(r)(1) A Medicare supplemental policy may not be issued or renewed (or otherwise provide coverage after the date described in subsection (p) (1) (C)) in any State unless—

(A) the policy can be expected for periods after the effective date of these provisions (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such periods and in accordance with a uniform methodology, including uniform reporting standards, developed by the National Association of Insurance Commissioners), to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and...

CMS regulations (Code of Federal Regulations, Title 42, Chapter IV—Centers for Medicare and Medicaid Services) which implement federal law, are more specific in the definition of "policy." Part 403.205(b):

(b) The term policy includes both policy form and policy as specified in paragraphs (b) (1) and (b) (2) of this section.

(1) Policy form. Policy form is the form of health insurance contract that is approved by and on file with the State agency for the regulation of insurance.

(2) Policy. Policy is the contract—

(i) Issued under the policy form; and

(ii) Held by the policy holder.

Part 403.215 defines loss ratio standards referencing benefits provided under the policy:

(a) The policy must be expected to return to the policyholders, in the form of aggregate benefits provided under the policy—

(1) At least 75 percent of the aggregate amount of premiums in the case of group policies; and

(2) At least 60 percent of the aggregate amount of premiums in the case of individual policies.

We also noted that the *Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act* (incorporated into federal law by reference) is consistent with the language above. Subsection 14(A) (1):

(a) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

- (i) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies, or
- (ii) At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies.

We hope the above serves as sufficient reference as to our conclusion that loss ratio standards apply at the policy form level. If you have any questions, or would like to discuss these comments further, please contact Tim Mahony, the Academy's state health policy analyst (202-785-7880; [mahony@actuary.org](mailto:mahony@actuary.org)).

Sincerely,



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Chair, Medicare Supplement Work Group  
American Academy of Actuaries

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