

1 **State of Arkansas**
2 **78th General Assembly**
3 **First Extraordinary Session, 1992**
4 **By: Senator Moore**

Call Item 15

A Bill

SENATE BILL 3

For An Act To Be Entitled

8 "AN ACT TO AMEND *TITLES 17, 20 AND 23* OF ARKANSAS CODE
9 ANNOTATED OF 1987 AND TO PROVIDE FOR MINIMUM STANDARDS FOR
10 MEDICARE SUPPLEMENT INSURANCE; AND FOR OTHER PURPOSES."

11

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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14 SECTION 1. Arkansas Code 23-79-109, Subsection (a), is hereby amended
15 to read as follows:

16 "(a) No basic insurance policy, or annuity contract form, or
17 application form where written application is required and is to be made a
18 part of the policy or contract, or printed rider or endorsement form or form
19 of renewal certificate, shall be issued, delivered, or used as to a subject of
20 insurance resident, located, or to be performed in this state unless the form
21 has been filed with and approved by the commissioner and, in the case of
22 individual disability contracts, the rates have been filed with and approved
23 by the commissioner.

24 (1) This subsection shall not apply to surety bonds, nor to
25 policies, riders, endorsements, or forms of unique character designed for, and
26 used with relation to, insurance upon a particular subject, or which relate to
27 the manner of distribution of benefits or to the reservation of rights and
28 benefits under life and disability insurance policies and are used at the
29 request of the individual policyholder, contract holder, or certificate
30 holder.

31 (2) As to group insurance policies effectuated and delivered
32 outside this state but covering persons resident in this state, the group
33 certificates to be delivered or issued for delivery in this state shall be
34 filed with and approved by the commissioner.

35 (3) No group disability certificate of insurance may be extended

1 to residents of this state under a group disability policy issued outside this
2 state which does not include the provisions required for group policies issued
3 in this state, unless the commissioner determines that the provisions are not
4 appropriate for the coverage provided. Upon request of the Insurance
5 Commissioner, copies of such group disability policies issued outside this
6 state shall be made available on an informational basis.

7 (4) On and after January 1, 1990, all medicare supplement rates
8 shall be based on a composite age basis only, and shall not be based on any
9 age banding or other groupings.

10 (5) Nothing in this subsection shall prohibit an insurer or
11 hospital and medical service corporation issuing medicare supplement insurance
12 policies from using its usual and customary underwriting procedures or
13 excluding preexisting health conditions; provided, that no insurer shall
14 refuse to issue a medicare supplement policy based solely on the age of the
15 applicant."

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17 SECTION 2. Arkansas Code 23-79-112, Subsection (f), is hereby
18 amended to read as follows:

19 "(f) (1) All individual life, annuity and disability policy or
20 contract filings, excluding medicare supplement policies and variable life
21 policies and variable annuities, shall have a notice prominently printed on
22 the first page of the policy or contract stating in substance that the
23 policyholder shall have the right to return the policy or contract within ten
24 (10) days of its delivery, unless the policy or contract provides for a
25 greater period, and to have the premium refunded if after examination of the
26 policy or contract the policyholder is not satisfied for any reason.

27 (2) If the policyholder returns the policy or contract to the
28 insurance company or to the agent through whom it was purchased within ten
29 (10) days of the policy delivery, it shall be void from its inception and the
30 parties shall be in the same position as if no policy or contract had been
31 issued."

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33 SECTION 3. Chapter 79 of Title 23 is hereby amended by inserting an
34 additional subchapter to read as follows:

35 "§23-79-401. Title. This Act shall be known and cited as the `Medicare

1 Supplement Insurance Minimum Standards Act'.

2 §23-79-402. Applicability and Scope.

3 (a) Except as otherwise specifically provided in §23-79-405, this Act
4 shall apply to:

5 (1) All medicare supplement policies delivered or issued for
6 delivery in this State on or after the effective date of this Act; and

7 (2) All certificates issued under group medicare supplement
8 policies, which certificates have been delivered or issued for delivery in
9 this State.

10 (b) This Act shall not apply to a policy of one or more employers or
11 labor organizations, or of the trustees of a fund established by one or more
12 employers or labor organizations, or combination thereof, for employees or
13 former employees or a combination thereof, or for members or former members,
14 or a combination thereof, of the labor organizations.

15 (c) The provisions of this Act are not intended to prohibit or apply to
16 insurance policies or health care benefit plans, including group conversion
17 policies, provided to medicare eligible persons, which policies are not
18 marketed or held to be medicare supplement policies or benefit plans.

19 §23-79-403. Definitions. As used in this Act, unless the context
20 otherwise requires:

21 (a) `Applicant' means:

22 (1) in the case of an individual medicare supplement policy, the
23 person who seeks to contract for insurance benefits, and

24 (2) in the case of a group medicare supplement policy, the
25 proposed certificateholder;

26 (b) `Certificate' means any certificate delivered or issued for
27 delivery in this State under a group medicare supplement policy;

28 (c) `Certificate Form' means the form on which the certificate is
29 delivered or issued for delivery by the issuer;

30 (d) `Commissioner' means the Insurance Commissioner of the State of
31 Arkansas;

32 (e) `Issuer' includes insurance companies, fraternal benefit societies,
33 health care service plans, health maintenance organizations, and any other
34 entity delivering or issuing for delivery in this State medicare supplement
35 policies or certificates;

1 (f) `Medicare' means the `Health Insurance for the Aged Act' Title
2 XVIII of the Social Security Amendments of 1965, as then constituted or later
3 amended;

4 (g) `Medicare Supplement Policy' means a group or individual policy of
5 disability insurance or a subscriber contract of a hospital and medical
6 service corporation or health maintenance organization, other than a policy
7 issued pursuant to a contract under Section 1876 or Section 1833 of the
8 federal Social Security Act (42 U.S.C. Section 1395 et seq.), or an issued
9 policy under a demonstration project authorized pursuant to amendments to the
10 federal Social Security Act, which is advertised, marketed or designed
11 primarily as a supplement to reimbursements under medicare for the hospital,
12 medical or surgical expenses of persons eligible for medicare.

13 (h) `Policy Form' means the form on which the policy is delivered or
14 issued for delivery by the issuer.

15 §23-79-404. Standards for Policy provisions and Authority to Promulgate
16 Regulations. (a) No medicare supplement policy or certificate in force
17 in this State shall contain benefits that duplicate benefits provided by
18 medicare.

19 (b) Notwithstanding any other provision of law of this State, a
20 medicare supplement policy or certificate shall not exclude or limit benefits
21 for losses incurred more than six (6) months from the effective date of
22 coverage because it involved a pre-existing condition. The policy or
23 certificate shall not define a pre-existing condition more restrictively than
24 a condition for which medical advice was given or treatment was recommended by
25 or received from a physician within six (6) months before the effective date
26 of coverage.

27 (c) The commissioner shall adopt reasonable regulations to establish
28 specific standards for policy provisions of medicare supplement policies and
29 certificates. Such standards shall be in addition to and in accordance with
30 applicable laws of this State, including Arkansas Code Annotated §23-66-306
31 and, as amended by this Act, §23-79-109 and §23-79-112. No requirement of the
32 Insurance Code relating to minimum required policy benefits, other than the
33 minimum standards contained in this Act, shall apply to medicare supplement
34 policies and certificates. The standards may cover, but not be limited to:

35 (1) Terms of renewability;

- 1 (2) Initial and subsequent conditions of eligibility;
- 2 (3) Nonduplication of coverage;
- 3 (4) Probationary periods;
- 4 (5) Benefit limitations, exceptions and reductions;
- 5 (6) Elimination periods;
- 6 (7) Requirements for replacement;
- 7 (8) Recurrent conditions; and
- 8 (9) Definitions of terms.

9 (d) The commissioner shall adopt reasonable regulations to establish
10 minimum standards for benefits, claims payment, marketing practices and
11 compensation arrangements and reporting practices, for medicare supplement
12 policies and certificates.

13 (e) The commissioner may adopt from time to time, such reasonable
14 regulations as are necessary to conform medicare supplement policies and
15 certificates to the requirements of federal law and regulations promulgated
16 thereunder, including but not limited to:

17 (1) Requiring refunds or credits if the policies or certificates
18 do not meet loss ratio requirements;

19 (2) Establishing a uniform methodology for calculating and
20 reporting loss ratios;

21 (3) Assuring public access to policies, premiums and loss ratio
22 information of issuers of medicare supplement insurance;

23 (4) Establishing a process for approving or disapproving policy
24 forms and certificate forms and proposed premium increases;

25 (5) Establishing a policy for holding public hearings prior to
26 approval of premium increases; and

27 (6) Establishing standards for Medicare Select policies and
28 certificates.

29 (f) The commissioner may adopt reasonable regulations that specify
30 prohibited policy provisions not otherwise specifically authorized by statute
31 which, in the opinion of the commissioner, are unjust, unfair or unfairly
32 discriminatory to any person insured or proposed to be insured under a
33 medicare supplement policy or certificate.

34 §23-79-405. Loss Ratio Standards. Medicare supplement policies shall
35 return to policyholders benefits which are reasonable in relation to the

1 premiums charged. The commissioner shall issue reasonable regulations to
2 establish minimum standards for loss ratios of medicare supplement policies on
3 the basis of incurred claims experience, or incurred health care expenses
4 where coverage is provided by a health maintenance organization on a service
5 rather than reimbursement basis, and earned premiums in accordance with
6 accepted actuarial principles and practices.

7 §23-79-406. Disclosure Standards. (a) In order to provide for full
8 and fair disclosure in the sale of medicare supplement policies, no medicare
9 supplement policy or certificate shall be delivered in this State unless an
10 outline of coverage is delivered to the applicant at the time application is
11 made.

12 (b) The commissioner shall prescribe the format and content of the
13 outline of coverage required by Subsection (a). For purposes of this Section,
14 'format' means style, arrangements and overall appearance, including such
15 items as the size, color and prominence of type and arrangement of text and
16 captions. Such outline of coverage shall include:

17 (1) A description of the principal benefits and coverage provided
18 in the policy;

19 (2) A statement of the renewal provisions, including any
20 reservation by the issuer of a right to change premiums, and disclosure of the
21 existence of any automatic renewal premium increases based on the
22 policyholder's age; and

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

26 (c) The commissioner may prescribe by regulation a standard form and
27 the contents of an informational brochure for persons eligible for medicare,
28 which is intended to improve the buyer's ability to select the most
29 appropriate coverage and improve the buyer's understanding of medicare.
30 Except in the case of direct response insurance policies, the commissioner may
31 require by regulation that the informational brochure be provided to any
32 prospective insureds eligible for medicare concurrently with delivery of the
33 outline of coverage. With respect to direct response insurance policies, the
34 commissioner may require by regulation that the prescribed brochure be
35 provided upon request to any prospective insureds eligible for medicare, but

1 in no event later than the time of policy delivery.

2 (d) The commissioner may adopt regulations for captions or notice
3 requirements, determined to be in the public interest and designed to inform
4 prospective insureds that particular insurance coverages are not medicare
5 supplement coverages, for all disability insurance policies sold to persons
6 eligible for medicare by reason of age, other than:

- 7 (1) Medicare supplement policies;
- 8 (2) Disability income policies;
- 9 (3) Basic, catastrophic or major medical expense policies; or
- 10 (4) Single premium, nonrenewable policies.

11 (e) The commissioner may adopt reasonable regulations to govern the
12 full and fair disclosure of the information in connection with the replacement
13 of disability policies, subscriber contracts or certificates by persons
14 eligible for medicare.

15 §23-79-407. Notice of Free Examination. Medicare supplement policies
16 and certificates shall have a notice prominently printed on the first page of
17 the policy or certificate or attached thereto stating in substance that the
18 applicant shall have the right to return the policy or certificate within
19 thirty (30) days of its delivery and to have the premium refunded if, after
20 examination of the policy or certificate, the applicant is not satisfied for
21 any reason. Any refund made pursuant to this Section shall be paid directly
22 to the applicant by the issuer in a timely manner.

23 §23-79-408. Filing Requirements for Advertising. Every issuer of
24 medicare supplement insurance policies or certificates in this State shall
25 provide a copy of any medicare supplement advertising intended for use in this
26 State whether through written, radio or television medium to the commissioner
27 for review and approval prior to their use in this State.

28 §23-79-409. Administrative Procedures. Regulations adopted pursuant
29 to this Act shall be subject to the provisions of Arkansas Code Annotated
30 §23-61-108 and to the provisions of Arkansas Code Annotated §§25-15-201, et
31 seq.

32 §23-79-410. Penalties. In addition to any other applicable penalties
33 for violations of the Arkansas Insurance Code, the commissioner may require
34 issuers violating any provisions of this Act or regulations promulgated
35 pursuant to this Act to cease marketing any medicare supplement policy or

1 certificate in this State which is related directly or indirectly to a
2 violation or may require such issuer to take such actions as are necessary to
3 comply with the provisions of this Act, or both."

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5 SECTION 4. *Arkansas Code 17-39-108 is hereby amended to read as*
6 *follows:*

7 "*Arkansas Code 17-39-108. Privileged communications--Payment for*
8 *services. Notwithstanding the provisions of this section or any other law,*
9 *the privileged communications provisions codified at §17-39-107 et seq., are*
10 *not repealed.*"

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12 SECTION 5. *Arkansas Code 20-15-906(c) is hereby amended to read as*
13 *follows:*

14 "*(c) Notwithstanding the provisions of this section or any other law,*
15 *the privileged communications provisions codified at §17-39-107 et seq., are*
16 *not repealed.*"

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18 SECTION 6. Repealer. *Arkansas Code 23-86-105 and Arkansas Code 23-79-*
19 *145 are hereby repealed.*

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21 SECTION 7. Provisions of this Act of a general and permanent nature are
22 amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
23 Revision Commission shall incorporate the same in the Code.

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25 SECTION 8. All laws and parts of laws in conflict with the Act are
26 hereby repealed.

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28 SECTION 9. Emergency. It is hereby found and determined by the General
29 Assembly that certain provisions of the Arkansas Code concernig payment of
30 covered services are confusing and misleading and could cause irreparable harm
31 to citizens of Arkansas. Therefore, an emergency is hereby declared to exist
32 and this Act being necessary for the preservation of the public peace, health
33 and safety the provisions of this Act shall be in full force and effect from
34 and after its passage and approval.

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/s/Sen. Moore