

**ASSEMBLY, No. 5265**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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INTRODUCED MAY 13, 2019

**Sponsored by:**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**SYNOPSIS**

Revises law concerning Medicare supplement insurance coverage.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/18/2019)**

1 AN ACT concerning Medicare supplement coverage and amending  
2 P.L.1995, c.229.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 1 of P.L.1995, c.229 (C.17B:26A-12) is amended to  
8 read as follows:

9 1. The Legislature finds and declares that:

10 a. As of April 1, 1995, individuals in the State of New Jersey  
11 under age 65 who became eligible for Medicare benefits due to a  
12 disability or because they suffer from the end stage of renal disease do  
13 not have access to Medicare supplement insurance, otherwise known  
14 as "Medigap" insurance.

15 b. Prior to that date only one health insurance carrier in New  
16 Jersey offered Medicare supplement insurance contracts to the under  
17 65 population. Unsustainable losses, caused in part by the fact that  
18 this carrier was the only carrier providing such coverage, led to the  
19 carrier's withdrawal from the Medicare supplement insurance market  
20 for the under 65 population on March 31, 1995.

21 c. Because Medicare supplement insurance pays for many of the  
22 health care expenses not covered by Medicare, the absence of  
23 Medicare supplement insurance will eventually leave thousands of  
24 blind, AIDS, disabled and dialysis patients in New Jersey without any  
25 means of secondary insurance to supplement their Medicare coverage.  
26 For many of these people with serious illnesses, the 20 percent co-  
27 payments and deductibles charged by Medicare will cause financial  
28 hardship and emotional distress. If no action is taken, Medicare  
29 recipients under 65 years old will be forced to deplete their personal  
30 assets and may eventually be forced to resort to Medicaid to  
31 supplement their health care needs.

32 d. Subsequent to the enactment of P.L.1995, c. 229 (C.17B:26A-  
33 12 et seq.), section 401 of the Medicare Access and CHIP  
34 Reauthorization Act of 2015, Pub. L. 114-10, amended section 1882 of  
35 the Social Security Act (42 U.S.C. s.1395ss), prohibiting the issue of  
36 Medicare supplement policies that provide coverage of the Medicare  
37 Part B deductible to an individual who, on or after January 1, 2020, is  
38 a newly eligible Medicare beneficiary, and further specifying that  
39 reference to a Medicare supplement policy which has a benefit  
40 package classified as Medicare Part C shall be deemed, as of January  
41 1, 2020, to be a reference to a Medicare supplement policy which has a  
42 benefit package classified as Medicare Part D, unless the Secretary of  
43 the United States Department of Health and Human Services provides  
44 otherwise.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 e. Therefore, the Legislature declares that it is in the public  
2 interest:

3 (1) to ensure that Medicare supplement insurance is available to  
4 the individuals under 65 years of age who become eligible for  
5 Medicare benefits;

6 (2) to require all health insurance carriers who currently sell  
7 Medicare supplement insurance to the over age 65 population to also  
8 offer, at a minimum, Medicare Supplement Plan C coverage to the  
9 under age 65 population who become eligible for Medicare prior to  
10 January 1, 2020;

11 (3) to require all health insurance carriers that currently sell  
12 Medicare supplement insurance to the over age 65 population to also  
13 offer, at a minimum, Medicare Supplement Plan D coverage to the  
14 under age 65 population who become newly eligible on or after  
15 January 1, 2020;

16 (4) to establish a mechanism that will: allow the premiums on  
17 those Medicare supplement insurance policies and contracts to remain  
18 affordable; encourage insurance carriers to continue to serve or enter  
19 this market; and provide for the equitable sharing of any losses;

20 **[(4)] (5)** to ensure that premiums for the more than 200,000 New  
21 Jersey residents who have purchased Medicare supplement insurance  
22 remain affordable and do not become subject to excessive rate  
23 increases; and

24 **[(5)] (6)** that regulations necessary to effectuate the purposes of  
25 this act be promulgated by the Commissioner of Banking and  
26 Insurance expeditiously due to the urgency of the situation.  
27 (cf: P.L.1995, c. 229, s.1)  
28

29 2. Section 2 of P.L.1995, c.229 (C.17B:26A-13) is amended to  
30 read as follows:

31 2. a. **【No later than 60 days after the effective date of this act】**  
32 Except as otherwise provided in subsection d. of this section, every  
33 carrier issuing or renewing Medicare supplement insurance policies or  
34 contracts shall, as a condition of issuing or renewing health benefits  
35 plans in this State **【.】** :

36 (1) offer and renew, at a minimum, Medicare Supplement Plan C  
37 policies or contracts to persons in this State 50 years of age or older  
38 who are entitled to Medicare benefits due to disability **【**, except as  
39 otherwise provided in subsection d. of this section**】** prior to January 1,  
40 2020;

41 (2) offer and renew, at a minimum, Medicare Supplement Plan D  
42 policies or contracts to persons in this State 50 years of age or older  
43 who are newly eligible Medicare beneficiaries on or after January 1,  
44 2020; and

45 (3) offer and renew Medicare Supplement Plan D policies or  
46 contracts to persons in this State 50 years of age or older who are  
47 entitled to Medicare benefits due to disability prior to January 1, 2020

1 if such a person applies for Medicare Supplement Plan D on or after  
2 January 1, 2020 but during the six-month period beginning with the  
3 first of the month in which the individual is enrolled in Medicare Part  
4 B, and the individual is not covered by any other Medicare  
5 Supplement Plan.

6 b. No carrier shall deny or condition the issuance or renewal of a  
7 Medicare supplement insurance policy or contract available for sale in  
8 this State pursuant to subsection a. of this section nor discriminate in  
9 the pricing of such policy or contract because of the health status,  
10 claims experience, receipt of health care or medical condition of an  
11 applicant if an application for **the policy or contract** Medicare Plan  
12 C is submitted during the six-month period beginning with the first  
13 month in which an individual is enrolled for benefits under Medicare  
14 Part B or if the application for **the policy or contract** Medicare Plan  
15 D is submitted within **six** 12 months **after the effective date of this**  
16 **act** beginning with the first month in which an individual is enrolled  
17 for benefits under Medicare Part B if the individual is a newly eligible  
18 Medicare beneficiary on or after January 1, 2020.

19 c. Subsections a. and b. of this section shall not be construed as  
20 preventing the exclusion of benefits under a policy or contract during  
21 the first three months, based on a preexisting condition for which the  
22 insured received treatment or was otherwise diagnosed during the six  
23 months before the policy or contract became effective, except that the  
24 limitation shall not apply to an individual who has, under a prior health  
25 benefits policy or contract, with no intervening lapse in coverage, been  
26 treated or diagnosed by a physician for a condition under that policy or  
27 contract or satisfied a three-month preexisting condition limitation.

28 d. (1) Notwithstanding the provisions of subsection a. of this  
29 section to the contrary, a carrier that does not currently issue or renew  
30 individual Medicare supplement insurance policies or contracts and  
31 does issue and renew Medicare supplement insurance policies or  
32 contracts for groups whose membership in the group is not based on  
33 health status, claims experience, receipt of health care or medical  
34 condition, shall not be required to provide coverage to persons eligible  
35 for Medicare supplement insurance coverage pursuant to subsection a.  
36 of this section, other than to members of the group.

37 (2) No group to which the provisions of paragraph (1) of this  
38 subsection apply shall institute an age requirement for participation in  
39 the group after June 1, 1995.

40 e. (1) Rates for Medicare supplement insurance policies or  
41 contracts issued pursuant to this section shall be no greater than the  
42 lowest rate charged by a carrier for the same type of policies or  
43 contracts issued to persons 65 years of age and over and shall be  
44 formulated in accordance with the provisions of section 6 of P.L.1982,  
45 c.95 (C.17:35C-6) or section 6 of P.L.1982, c.94 (C.17B:26A-6), as  
46 appropriate, and any rules or regulations promulgated pursuant thereto.

47 (2) Following the close of each carrier's accounting year, if the  
48 commissioner determines that a carrier's loss ratio for policies or

1 contracts issued pursuant to section 2 or 3 of **【this act】** P.L.1995, c.229  
2 (C.17B:26A-13 or 17B:26A-14) was less than 75% for group policies  
3 or contracts or less than 65% for individual policies or contracts for  
4 that calendar year, the carrier shall be required to refund to the holders  
5 of any policy or contract the difference between the amount of net  
6 earned premium it received that year and the amount that would have  
7 been necessary to achieve the 75% or 65% loss ratio, as appropriate.  
8 (cf: P.L.1995, c. 229, s.2)

9  
10 3. Section 3 of P.L.1995, c.229 (C.17B:26A-14) is amended to  
11 read as follows:

12 3. a. The commissioner shall adopt rules and regulations  
13 establishing a plan to provide Medicare Supplement Plan C coverage  
14 of the standardized Medicare supplement plans to persons under 50  
15 years of age in this State who are entitled to Medicare benefits due to  
16 disability **【no later than 120 days after the effective date of this act】**  
17 prior to January 1, 2020, and further, establishing a plan to provide  
18 Medicare Supplement Plan D coverage to persons in this State under  
19 50 years of age who are entitled, on a newly eligible basis, to Medicare  
20 benefits due to disability on or after January 1, 2020.

21 b. The plan shall not deny or condition the issuance or renewal of  
22 a Medicare supplement insurance policy or contract available for sale  
23 in this State pursuant to subsection a. of this section nor discriminate  
24 in the pricing of such policy or contract because of the health status,  
25 claims experience, receipt of health care or medical condition of an  
26 applicant if an application for **【the】** a Medicare Plan C policy or  
27 contract is submitted during the six-month period beginning with the  
28 first month in which an individual is enrolled for benefits under  
29 Medicare Part B or if the application for **【the】** a Medicare Plan D  
30 policy or contract is submitted **【within six months after the effective**  
31 **date of this act】** during the 12-month period beginning with the first  
32 month in which an individual is enrolled for benefits under Medicare  
33 Part B, and a newly eligible Medicare beneficiary on or after January  
34 1, 2020. The plan shall provide that an individual who becomes  
35 eligible for Medicare due to disability prior to January 1, 2020 has an  
36 opportunity to apply for Medicare Plan D if the individual applies on  
37 or after January 1, 2020, but during the six-month period beginning  
38 with the first of the month in which the individual is enrolled for  
39 benefits under Medicare Part B, and the individual is not covered by  
40 any other Medicare Supplement Plan.

41 c. Subsections a. and b. of this section shall not be construed as  
42 preventing the exclusion of benefits under a policy or contract during  
43 the first three months, based on a preexisting condition for which the  
44 insured received treatment or was otherwise diagnosed during the six  
45 months before the policy or contract became effective.

46 d. The plan shall provide for the appointment of a contracting  
47 carrier to provide the coverage specified in subsection a. of this

1 section. The carrier shall have experience in providing and servicing  
2 standardized Medicare supplement insurance policies or contracts to  
3 persons in this State.

4 e. The rates for the plan established pursuant to subsection a. of  
5 this section shall be no greater than the lowest rate charged by the  
6 contracting carrier for Medicare Supplement Plan C or Medicare  
7 Supplement Plan D policies or contracts, as applicable, issued by the  
8 contracting carrier to persons pursuant to subsection a. of section 2 of  
9 **【this act】** P.L.1995, c.229 (C.17B:26A-13).

10 f. The plan shall provide for the appointment of a governing  
11 board which shall be responsible for implementing the provisions of  
12 **【this act】** P.L.1995, c.229 (C.17B:26A-12 et seq.) consistent with the  
13 rules and regulations adopted pursuant to subsection a. of this section.  
14 The governing board shall include representatives from, among others,  
15 the carriers and health maintenance organizations subject to the  
16 provisions of section 4 of **【this act】** P.L.1995, c.229 (C.17B:26A-  
17 15).

18 (cf: P.L.1995, c. 229, s.3)

19  
20 4. Section 6 of P.L.1995, c.229 (C.17B:26A-17) is amended to  
21 read as follows:

22 6. As used in this act:

23 "Carrier" means an insurance company or service corporation  
24 authorized to issue health benefits plans in this State.

25 "Financially impaired" means a carrier or health maintenance  
26 organization which, after the effective date of **【this act】** P.L.1995,  
27 c.229 (C.17B:26A-12 et seq.), is not insolvent, but is deemed by the  
28 commissioner to be potentially unable to fulfill its contractual  
29 obligations, or a carrier or health maintenance organization which is  
30 under an order of rehabilitation or conservation by a court of  
31 competent jurisdiction.

32 "Health benefits plan" means a hospital and medical expense  
33 insurance policy; hospital service corporation contract, medical service  
34 corporation contract or health service corporation contract delivered or  
35 issued for delivery in this State.

36 "Newly eligible" means first eligible for Medicare benefits by  
37 reason of age or disability on or after January 1, 2020, in accordance  
38 with 42 U.S.C. s.426 or 426-1.

39 (cf: P.L.1995, c. 229, s.6)

40  
41 5. This act shall take effect immediately.

#### 42 43 44 STATEMENT

45  
46 This bill requires all health insurance carriers that currently sell  
47 Medicare supplement insurance to the over age 65 population to also  
48 offer, at a minimum, Medicare Supplement Plan D coverage to the

1 under age 65 population who become eligible due to disability on or  
2 after January 1, 2020. The revisions proposed by this bill to New  
3 Jersey law governing Medicare supplement insurance result from  
4 recent changes made to the federal Medicare law with respect to this  
5 population.

6 Specifically, the bill provides that every carrier issuing or  
7 renewing Medicare supplement insurance policies or contracts shall, as  
8 a condition of issuing or renewing health benefits plans in this State:

9 (1) offer and renew, at a minimum, Medicare Supplement Plan C  
10 policies or contracts to persons in this State 50 years of age or older  
11 who are entitled to Medicare benefits due to disability prior to January  
12 1, 2020;

13 (2) offer and renew, at a minimum, Medicare Supplement Plan D  
14 policies or contracts to persons in this State 50 years of age or older  
15 who are newly eligible Medicare beneficiaries on or after January 1,  
16 2020; and

17 (3) offer and renew Medicare Supplement Plan D policies or  
18 contracts to persons in this State 50 years of age or older who are  
19 entitled to Medicare benefits due to disability prior to January 1, 2020  
20 if such a person applies for Medicare Supplement Plan D on or after  
21 January 1, 2020 but during the six-month period beginning with the  
22 first of the month in which the individual is enrolled in Medicare Part  
23 B, and the individual is not covered by any other Medicare  
24 Supplement Plan.

25 The bill requires the Commissioner of Banking and Insurance to  
26 adopt rules and regulations establishing a plan to provide Medicare  
27 supplement coverage to persons in this State under 50 years of age  
28 who are entitled, on a newly eligible basis, to Medicare benefits due to  
29 disability on or after January 1, 2020. Under the bill, the plan may not  
30 deny or condition the issuance or renewal of a Medicare supplement  
31 insurance policy or contract available for sale in this State nor  
32 discriminate in the pricing of such policy or contract because of the  
33 health status, claims experience, receipt of health care or medical  
34 condition of an applicant, under certain circumstances.

35 Under the bill, “newly eligible” means first eligible for Medicare  
36 benefits by reason of age or disability on or after January 1, 2020, in  
37 accordance with 42 U.S.C. s.426 or 426-1.