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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

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# ENROLLED

SENATE BILL NO. 282

(By Senators Minard and Selmer)

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PASSED April 7 1993  
In Effect 90 days from Passage

**E N R O L L E D**

**Senate Bill No. 282**

(SENATORS MINARD AND HELMICK)

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[Passed April 7, 1993; in effect ninety days from passage.]

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AN ACT to amend and reenact section three-d, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-b, article twenty-eight of said chapter, all relating to medicare supplement insurance; revising the definition of medicare supplement policy; requiring disclosure in a medicare supplement policy of any automatic renewal premium increases based on a policyholder's age; increasing the free examination period from ten to thirty days for a medicare supplement policy issued other than by direct response solicitation; requiring that any premium refund requested pursuant to a free examination of such a policy be paid directly to the policy applicant in a timely manner; and making technical corrections.

*Be it enacted by the Legislature of West Virginia:*

That section three-d, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five-b, article twenty-eight of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.****§33-16-3d. Medicare supplement insurance.**

1 (a) *Definitions.* —

2 (1) “Applicant” means, in the case of a group  
3 medicare supplement policy or subscriber contract, the  
4 proposed certificate holder.

5 (2) “Certificate” means, for the purposes of this  
6 section, any certificate issued under a group medicare  
7 supplement policy, which policy has been delivered or  
8 issued for delivery in this state.

9 (3) “Medicare supplement policy” means a group  
10 policy of accident and sickness insurance or a subscrib-  
11 er contract (of hospital and medical service corpora-  
12 tions or health maintenance organizations), other than  
13 a policy issued pursuant to a contract under Section  
14 1876 or 1833 of the federal Social Security Act (42  
15 U.S.C. Section 1395 et seq.) or an issued policy under  
16 a demonstration project authorized pursuant to  
17 amendments to the federal Social Security Act, which  
18 is advertised, marketed or designed primarily as a  
19 supplement to reimbursements under medicare for  
20 the hospital, medical or surgical expenses of persons  
21 eligible for medicare. Such term does not include:

22 (A) A policy or contract of one or more employers or  
23 labor organizations, or of the trustees of a fund  
24 established by one or more employers or labor organi-  
25 zations, or a combination thereof, for employees or  
26 former employees, or combination thereof, or for  
27 members or former members, or combination thereof,  
28 of the labor organizations; or

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

38 members; or

39 (C) Individual policies or contracts issued pursuant  
40 to a conversion privilege under a policy or contract of  
41 group or individual insurance when such group or  
42 individual policy or contract includes provisions which  
43 are inconsistent with the requirements of this section.

44 (4) "Medicare" means the Health Insurance for the  
45 Aged Act, Title XVIII of the Social Security Amend-  
46 ments of 1965, as then constituted or later amended.

47 (b) *Standards for policy provisions.* —

48 (1) The commissioner shall issue reasonable rules to  
49 establish specific standards for policy provisions of  
50 medicare supplement policies. Such standards shall be  
51 in addition to and in accordance with the applicable  
52 laws of this state and may cover, but shall not be  
53 limited to:

54 (A) Terms of renewability;

55 (B) Initial and subsequent conditions of eligibility;

56 (C) Nonduplication of coverage;

57 (D) Probationary period;

58 (E) Benefit limitations, exceptions and reductions;

59 (F) Elimination period;

60 (G) Requirements for replacement;

61 (H) Recurrent conditions; and

62 (I) Definitions of terms.

63 (2) The commissioner may issue reasonable rules  
64 that specify prohibited policy provisions not otherwise  
65 specifically authorized by statute which, in the opinion  
66 of the commissioner, are unjust, unfair or unfairly  
67 discriminatory to any person insured or proposed for  
68 coverage under a medicare supplement policy.

69 (3) Notwithstanding any other provisions of the law,  
70 a medicare supplement policy may not deny a claim  
71 for losses incurred more than six months from the  
72 effective date of coverage for a preexisting condition.

73 The policy may not define a preexisting condition  
74 more restrictively than a condition for which medical  
75 advice was given or treatment was recommended by  
76 or received from a physician within six months before  
77 the effective date of coverage.

78 (c) *Minimum standards for benefits.* — The commis-  
79 sioner shall issue reasonable rules to establish min-  
80 imum standards for benefits under medicare supple-  
81 ment policies.

82 (d) *Loss ratio standards.* — Medicare supplement  
83 policies shall be expected to return to policyholders  
84 benefits which are reasonable in relation to the  
85 premium charge. The commissioner shall issue reason-  
86 able rules to establish minimum standards for loss  
87 ratios and for medicare supplement policies on the  
88 basis of incurred claims experience and earned premi-  
89 ums for the entire period for which rates are comput-  
90 ed to provide coverage and in accordance with accept-  
91 ed actuarial principles and practices. For purposes of  
92 rules issued pursuant to this subsection, medicare  
93 supplement policies issued as a result of solicitations of  
94 individuals through the mail or mass media advertis-  
95 ing, including both print and broadcast advertising,  
96 shall be treated as individual policies.

97 (e) *Disclosure standards.* —

98 (1) In order to provide for full and fair disclosure in  
99 the sale of accident and sickness policies, to persons  
100 eligible for medicare, the commissioner may require  
101 by rule that no policy of accident and sickness insur-  
102 ance may be issued for delivery in this state and no  
103 certificate may be delivered pursuant to such a policy  
104 unless an outline of coverage is delivered to the  
105 applicant at the time application is made.

106 (2) The commissioner shall prescribe the format and  
107 content of the outline of coverage required by subdivi-  
108 sion (1) above. For purposes of this subdivision,  
109 "format" means style, arrangements and overall  
110 appearance, including such items as size, color and  
111 prominence of type and the arrangement of text and  
112 captions. Such outline of coverage shall include:

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

115 (B) A statement of the exceptions, reductions and  
116 limitations contained in the policy;

117 (C) A statement of the renewal provisions including  
118 any reservation by the insurer of the right to change  
119 premiums and disclosure of the existence of any  
120 automatic renewal premium increases based on the  
121 policyholder's age;

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

126 (3) The commissioner may prescribe by rule a  
127 standard form and the contents of an informational  
128 brochure for persons eligible for medicare, which is  
129 intended to improve the buyer's ability to select the  
130 most appropriate coverage and improve the buyer's  
131 understanding of medicare. Except in the case of  
132 direct response insurance policies, the commissioner  
133 may require by rule that the information brochure be  
134 provided to any prospective insureds eligible for  
135 medicare concurrently with delivery of the outline of  
136 coverage. With respect to direct response insurance  
137 policies, the commissioner may require by rule that  
138 the prescribed brochure be provided upon request to  
139 any prospective insureds eligible for medicare, but in  
140 no event later than the time of policy delivery.

141 (4) The commissioner may further promulgate  
142 reasonable rules to govern the full and fair disclosure  
143 of the information in connection with the replacement  
144 of accident and sickness policies, subscriber contracts  
145 or certificates by persons eligible for medicare.

146 (f) *Notice of free examination.* — Medicare supple-  
147 ment policies or certificates, other than those issued  
148 pursuant to direct response solicitation, shall have a  
149 notice prominently printed on the first page of the  
150 policy or attached thereto stating in substance that the  
151 applicant shall have the right to return the policy or

152 certificate within thirty days from its delivery and  
153 have the premium refunded if, after examination of  
154 the policy or certificate, the applicant is not satisfied  
155 for any reason. Any refund made pursuant to this  
156 section shall be paid directly to the applicant by the  
157 issuer in a timely manner. Medicare supplement  
158 policies or certificates issued pursuant to a direct  
159 response solicitation to persons eligible for medicare  
160 shall have a notice prominently printed on the first  
161 page or attached thereto stating in substance that the  
162 applicant shall have the right to return the policy or  
163 certificate within thirty days of its delivery and to  
164 have the premium refunded if, after examination, the  
165 applicant is not satisfied for any reason. Any refund  
166 made pursuant to this section shall be paid directly to  
167 the applicant by the issuer in a timely manner.

168 (g) *Administrative procedures.* — Rules promulgated  
169 pursuant to this section shall be subject to the provi-  
170 sions of chapter twenty-nine-a (the West Virginia  
171 Administrative Procedures Act) of this code.

172 (h) *Severability.* — If any provision of this section or  
173 the application thereof to any person or circumstance  
174 is for any reason held to be invalid, the remainder of  
175 the section and the application of such provision to  
176 other persons or circumstances shall not be affected  
177 thereby.

**ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE  
MINIMUM STANDARDS.**

**§33-28-5b. Medicare supplement insurance.**

1 (a) *Definitions.* —

2 (1) “Applicant” means, in the case of an individual  
3 medicare supplement policy or subscriber contract, the  
4 person who seeks to contract for insurance benefits.

5 (2) “Medicare supplement policy” means an individ-  
6 ual policy of accident and sickness insurance or a  
7 subscriber contract (of hospital and medical service  
8 corporations or health maintenance organizations),  
9 other than a policy issued pursuant to a contract under  
10 Section 1876 or 1833 of the federal Social Security Act

11 (42 U.S.C. Section 1395 et seq.) or an issued policy  
12 under a demonstration project authorized pursuant to  
13 amendments to the federal Social Security Act, which  
14 is advertised, marketed or designed primarily as a  
15 supplement to reimbursements under medicare for  
16 the hospital, medical or surgical expenses of persons  
17 eligible for medicare. Such term does not include:

18 (A) A policy or contract of one or more employers or  
19 labor organizations, or of the trustees of a fund  
20 established by one or more employers or labor organ-  
21 izations, or a combination thereof, for employees or  
22 former employees, or combination thereof, or for  
23 members or former members, or combination thereof,  
24 of the labor organizations; or

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

35 (C) Individual policies or contracts issued pursuant  
36 to a conversion privilege under a policy or contract of  
37 group or individual insurance when such group or  
38 individual policy or contract includes provisions which  
39 are inconsistent with the requirements of this section.

40 (3) "Medicare" means the Health Insurance for the  
41 Aged Act, Title XVIII of the Social Security Amend-  
42 ments of 1965, as then constituted or later amended.

43 (b) *Standards for policy provisions.* —

44 (1) The commissioner shall issue reasonable rules to  
45 establish specific standards for policy provisions of  
46 medicare supplement policies. Such standards shall be  
47 in addition to and in accordance with the applicable  
48 laws of this state and may cover, but shall not be  
49 limited to:



- 50 (A) Terms of renewability;
- 51 (B) Initial and subsequent conditions of eligibility;
- 52 (C) Nonduplication of coverage;
- 53 (D) Probationary period;
- 54 (E) Benefit limitations, exceptions and reductions;
- 55 (F) Elimination period;
- 56 (G) Requirements for replacement;
- 57 (H) Recurrent conditions; and
- 58 (I) Definitions of terms.

59 (2) The commissioner may issue reasonable rules  
60 that specify prohibited policy provisions not otherwise  
61 specifically authorized by statute which, in the opinion  
62 of the commissioner, are unjust, unfair or unfairly  
63 discriminatory to any person insured or proposed for  
64 coverage under a medicare supplement policy.

65 (3) Notwithstanding any other provisions of the law,  
66 a medicare supplement policy may not deny a claim  
67 for losses incurred more than six months from the  
68 effective date of coverage for a preexisting condition.  
69 The policy may not define a preexisting condition  
70 more restrictively than a condition for which medical  
71 advice was given or treatment was recommended by  
72 or received from a physician within six months before  
73 the effective date of coverage.

74 (c) *Minimum standards for benefits.* — The commis-  
75 sioner shall issue reasonable rules to establish min-  
76 imum standards for benefits under medicare supple-  
77 ment policies.

78 (d) *Loss ratio standards.* — Medicare supplement  
79 policies shall be expected to return to policyholders  
80 benefits which are reasonable in relation to the  
81 premium charge. The commissioner shall issue reason-  
82 able rules to establish minimum standards for loss  
83 ratios for medicare supplement policies on the basis of  
84 incurred claims experience and earned premiums for  
85 the entire period for which rates are computed to

86 provide coverage and in accordance with accepted  
87 actuarial principles and practices. For purposes of  
88 rules issued pursuant to this subsection, medicare  
89 supplement policies issued as a result of solicitations of  
90 individuals through the mail or mass media advertis-  
91 ing, including both print and broadcast advertising,  
92 shall be treated as individual policies.

93 (e) *Disclosure standards.* —

94 (1) In order to provide for full and fair disclosure in  
95 the sale of accident and sickness policies, to persons  
96 eligible for medicare, the commissioner may require  
97 by rule that no policy of accident and sickness insur-  
98 ance may be issued for delivery in this state and no  
99 certificate may be delivered pursuant to such a policy  
100 unless an outline of coverage is delivered to the  
101 applicant at the time application is made.

102 (2) The commissioner shall prescribe the format and  
103 content of the outline of coverage required by subdi-  
104 vision (1) above. For purposes of this subdivision,  
105 “format” means style, arrangements and overall  
106 appearance, including such items as size, color and  
107 prominence of type and the arrangement of text and  
108 captions. Such outline of coverage shall include:

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

111 (B) A statement of the exceptions, reductions and  
112 limitations contained in the policy;

113 (C) A statement of the renewal provisions including  
114 any reservation by the insurer of the right to change  
115 premiums and disclosure of the existence of any  
116 automatic renewal premium increases based on the  
117 policyholder’s age;

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

122 (3) The commissioner may prescribe by rule a  
123 standard form and the contents of an informational

124 brochure for persons eligible for medicare, which is  
125 intended to improve the buyer's ability to select the  
126 most appropriate coverage and improve the buyer's  
127 understanding of medicare. Except in the case of  
128 direct response insurance policies, the commissioner  
129 may require by rule that the information brochure be  
130 provided to any prospective insureds eligible for  
131 medicare concurrently with delivery of the outline of  
132 coverage. With respect to direct response insurance  
133 policies, the commissioner may require by rule that  
134 the prescribed brochure be provided upon request to  
135 any prospective insureds eligible for medicare, but in  
136 no event later than the time of policy delivery.

137 (4) The commissioner may further promulgate  
138 reasonable rules to govern the full and fair disclosure  
139 of the information in connection with the replacement  
140 of accident and sickness policies, subscriber contracts  
141 or certificates by persons eligible for medicare.

142 (f) *Notice of free examination.* — Medicare supple-  
143 ment policies or certificates, other than those issued  
144 pursuant to direct response solicitation, shall have a  
145 notice prominently printed on the first page of the  
146 policy or attached thereto stating in substance that the  
147 applicant shall have the right to return the policy or  
148 certificate within thirty days from its delivery and  
149 have the premium refunded if, after examination of  
150 the policy or certificate, the applicant is not satisfied  
151 for any reason. Any refund made pursuant to this  
152 section shall be paid directly to the applicant by the  
153 issuer in a timely manner. Medicare supplement  
154 policies or certificates issued pursuant to a direct  
155 response solicitation to persons eligible for medicare  
156 shall have a notice prominently printed on the first  
157 page or attached thereto stating in substance that the  
158 applicant shall have the right to return the policy or  
159 certificate within thirty days of its delivery and to  
160 have the premium refunded if, after examination, the  
161 applicant is not satisfied for any reason. Any refund  
162 made pursuant to this section shall be paid directly to  
163 the applicant by the issuer in a timely manner.

164 (g) *Administrative procedures.* — Rules promulgated

165 pursuant to this section shall be subject to the provi-  
166 sions of chapter twenty-nine-a (the West Virginia  
167 Administrative Procedures Act) of this code.

168 (h) *Severability.* — If any provision of this section or  
169 the application thereof to any person or circumstance  
170 is for any reason held to be invalid, the remainder of  
171 the section and the application of such provision to  
172 other persons or circumstances shall not be affected  
173 thereby.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
..... Ernest C. Moore  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within is approved this the 22<sup>nd</sup>  
day of April, 1993.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/16/93

Time 9:26 am