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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
Contact Person:	Jenny Taylor, Assistant General Counsel
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Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0780-01-58	Medicare Supplement Insurance Minimum Standards
Rule Number	**Rule Title**
0780-01-58-.17	Filing and Approval of Policies and Certificates and Premium Rates

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 0780-01-58
Medicare Supplement Insurance Minimum Standards

Amendment

Rule 0780-01-58-.17, Filing and Approval of Policies and Certificates and Premium Rates, is amended by deleting Paragraph (7) in its entirety and substituting the following language so that as amended the paragraph shall read:

(7) The commissioner may approve "attained age" rate structures for Medicare supplement policies or certificates based upon a determination that the benefits provided in the policy are reasonable in relation to the premium charged.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-6-112, 56-6-124(a), 56-7-1501 et seq., 56-7-1503, 56-7-1504, 56-7-1505, 56-7-1507, and 56-32-118(a), and Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, (1990), Genetic Information Non Discrimination Act, Pub. L. No.: 110-233 (2008), and Medicare Improvements for Patients and Providers Act, Pub. L. No.: 110-275 (2008).

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 1/27/17 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: November 16, 2016

Rulemaking Hearing(s) Conducted on: (add more dates). January 10, 2017

Date: 1/27/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 1/27/17

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/10/2017

Date

Department of State Use Only

Filed with the Department of State on: 3/16/17

Effective on: 6/14/17

Tre Hargett

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments received during the public comment period.

Regulatory Flexibility Addendum
Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Department of Commerce and Insurance has considered whether the proposed rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed rules are not anticipated to have a significant impact on small businesses. Tenn. Code Ann. §§ 56-1-701, 56-2-301, 56-6-112, 56-6-124(a), 56-7-1501 et seq., 56-7-1503, 56-7-1504, 56-7-1505, 56-7-1507, and 56-32-118(a), and Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, (1990), Genetic Information Non Discrimination Act, Pub. L. No.: 110-233 (2008), and Medicare Improvements for Patients and Providers Act, Pub. L. No.: 110-275 (2008) authorize the Commissioner to promulgate rules in order to regulate the rate structures for Medicare supplement policies or certificates. The proposed amendment eliminates the one (1) year banding and annual increase requirements for such policies, replacing them with a reasonableness standard.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The proposed rules will only apply to insurance companies writing Medicare supplement policies or certificates. While there may be some insurance companies considered to be small business affected by these rules, it is estimated that this number is small.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

The projected reporting, recordkeeping, and other administrative costs associated with compliance with this proposed rule, are not anticipated to increase from that which exists under the current rules these proposed rules amend.

(3) A statement of the probable effect on impacted small businesses and consumers.

The effect on small businesses is minimal. The proposed amendment will positively affect consumers by allowing for a more flexible rating structure, and will only affect those insurance companies writing Medicare supplement policies or certificates.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There are no alternative methods to make the proposed rule less costly, less intrusive, or less burdensome.

(5) A comparison of the proposed rule with any federal or state counterparts.

42 U.S.C.A. § 1395ss(b)(1)(A) requires states approving Medicare supplemental policies to enforce standards with respect to such policies equal to or more stringent than the NAIC Model Standards. Section 15(A) of the 2016 Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act ("Act") requires insurers to obtain approval for Medicare supplement policy rates by filing the rates along with supporting documentation with the Commissioner in accordance with the filing requirements prescribed by the Commissioner. Rule 0780-01-58-.17 similarly provides that insurers doing business in Tennessee are required to obtain rate approval by filing such rates with the Commissioner along with supporting documentation The proposed rule will allow the Commissioner to approve "attained age" rate structures for Medicare supplement policies that are reasonable in relation to the premium charge. The determination regarding whether certain "attained age" rates are reasonable in relation to the premium charged will be made using the supporting documentation that insurers are required to file for all rate approvals.

Most states have similar language permitting the Director and/or Commissioner of Insurance of that state discretion to approve certain rate methodologies if they are proven to be reasonable by supporting documentation.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Only insurance companies writing Medicare supplement policies or certificates are required to comply with this rule. Exempting any company from these proposed rules would place Tennessee residents at a risk of receiving disparate rating for Medicare supplement policies or certificates issued within the State of Tennessee.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules establish authority within the Commissioner to approve attained age rate structures for Medicare supplement polices or certificates based upon a determination that the benefits provided in the policy are reasonable in relation to the premium charged using the supporting documentation that insurers are required to file for all rate approvals.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Code Annotated §§ 56-1-701, 56-2-301, 56-6-112, 56-6-124(a), 56-7-1501 et seq., 56-7-1503, 56-7-1504, 56-7-1505, 56-7-1507, and 56-32-118(a), and Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, (1990), Genetic Information Non Discrimination Act, Pub. L. No.: 110-233 (2008), and Medicare Improvements for Patients and Providers Act, Pub. L. No.: 110-275 (2008) authorize the Commissioner to promulgate rules to regulate the rate structures for Medicare supplement policies or certificates.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will affect any insurance company licensed in the State of Tennessee which writes Medicare supplement policies or certificates.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any attorney general opinions or any judicial rulings directly related to this rule.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Brian Hoffmeister, Director of the Policy Analysis of the Insurance Division of the Tennessee Department of Commerce and Insurance.

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jenny Taylor, Assistant General Counsel for Insurance; Michael Humphreys, Assistant Commissioner for Insurance.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-770-5305; jenny.taylor@tn.gov

(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

Rule 0780-01-58-.17
Filing and Approval of Policies and Certificates and Premium Rates

(1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

(2) An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

(3) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

(4) (a) Except as provided in subparagraph (b), an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

1. The inclusion of new or innovative benefits;

2. The addition of either direct response or agent marketing methods;

3. The addition of either guaranteed issue or underwritten coverage;

4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

(5) (a) Except as provided in part 1., an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this Chapter that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

1. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

2. An issuer that discontinues the availability of a policy form or certificate form pursuant to subparagraph (5)(a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of

the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under subparagraph (a) unless the issuer complies with the following requirements:

1. The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

2. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

(6) (a) Except as provided in subparagraph (b), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Rule 0780-1-58-.16.

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(7) ~~An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases.~~ The commissioner may approve "attained age" rate structures for Medicare supplement policies or certificates based upon a determination that the benefits provided in the policy are reasonable in relation to the premium charged.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-6-112, 56-6-124(a), ~~56-7-1401 et seq., 56-7-1453, 56-7-1454, 56-7-1455, 56-7-1457,~~ 56-7-1501 et seq., 56-7-1503, 56-7-1504, 56-7-1505, 56-7-1507, and 56-32-118(a), and Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, (1990), Genetic Information Non Discrimination Act, Pub. L. No.: 110-233 (2008), and Medicare Improvements for Patients and Providers Act, Pub. L. No.: 110-275 (2008).