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2018 FEB 21 A 8:51

Samuel R. Marshall
President & CEO

February 20, 2018

Jodi Frantz, Deputy Chief Counsel
Bridget Burke, Regulatory Coordinator
Pennsylvania Insurance Department
1341 Strawberry Square
Harrisburg, PA 17120

**Re: Medicare Supplement Insurance Minimum Standards –
Proposed rulemaking**

Dear Ms. Frantz and Burke:

On behalf of our member companies and in coordination with our national counterparts, we offer the following comments on the Insurance Department's proposed amendments to Chapter 89, Subchapter K of its regulations, titled Medicare Supplement Insurance Minimum Standards.

While we endorse most the proposed amendments, we are concerned with the Department's proposed Section 89.781(g), which the Department describes as prohibiting ladle rating as an improper rating practice. That raises two concerns.

1. The distinction between "ladle rating" and "attained age rating"

The proposed Section 89.781(g) includes within its prohibition of "ladle rating" the practice of using "attained age rating" of more than one year. Ladle rating alone is prohibited by the second sentence of this subsection: "The rate for successive ages may not decrease as age increases." The Department, however, proposes to also prohibit attained age rating greater than one year through the first sentence of this subsection.

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We don't understand why the Department is using this proposed regulation to prohibit both rating practices, even as it only references and objects to ladle rating throughout its regulatory analysis. These are distinct rating practices and should be treated as such, not lumped together or, as here, prohibiting both practices based on the evaluation of only one.

First, the Department justifies its proposed prohibition of ladle rating as a "rating practice that can mislead individuals in the open enrollment market by allowing for the improper consideration of health status." Perhaps, although this seems more a conclusion than a finding based on any analysis. In any event, the Department makes no suggestion that attained age bands suffer the same defect.

Second, the Department itself has acknowledged these are distinct rating practices: **It currently allows attained age rating in Medicare supplement insurance rate filings, as do other states.** So while it may be correct that ladle rating "is not currently used by any insurer in Pennsylvania", the Department ignores the fact that it has been approving the use of attained age rating of more than one year in rate filings from individual insurers without any suggestion that this is an improper or misleading practice.

Should the Department want to change its position on attained age rating, the appropriate forum is the rate review process established in the Accident and Health Filing Reform Act, the same process that has controlled the Department's allowance of this rating practice to date. It should not, however, be allowed to effectively disapprove rate filings and a rating practice it has been approving solely by revising a regulation, certainly absent any new legislative direction.

We therefore recommend Section 89.781(g) be revised to delete its first sentence and any reference to attained age rating and attained age bands. Whether inadvertently or intentionally, this proposed subsection lumps these two distinct rating practices together, even as the supporting regulatory analysis refers only to ladle rating and as the Department's past and current practices show these to be distinct practices. The regulation should be, at a minimum, limited to its professed purpose of prohibiting only ladle rating.

2. The statutory authority for the proposed Section 89.781(g)

The Department cites the Medicare Supplement Insurance Act and the Accident and Health Filing Reform Act as its statutory authority for Section 89.781(g) and its proposed prohibition of ladle rating.

Neither of those acts touches on this rating practice. As the Department acknowledges, federal Medicare law does not prohibit ladle rating, and no other state expressly does so. Nor has the Pennsylvania General Assembly done so, despite an act covering a variety of specifics related to Medicare supplement insurance; and it hasn't delegated that power to the Department.

The Department justifies its proposed prohibition, in part, by saying ladle rating "is an industry practice that is not widely in use and is not currently used by any insurer in Pennsylvania." It doesn't, however, say whether any insurer has sought to use ladle rating in Pennsylvania, now or in the past, and how it handled any such rate filings: Did it disapprove them, on what grounds, and to what result?

This is not to defend ladle rating, as distinct from attained age rating. We believe the Department is correct that no insurer is, or has been, using ladle rating in Pennsylvania, so we have no experience with it.

Still, outlawing ladle rating as "improper" by regulation is a stretch, given the lack of precedent at the federal level, in other states, or even at the NAIC (it is an option in that model regulation that predates the recent changes to the federal Medicare law, none of which touch on this).

And that is especially true given the ambiguity of what constitutes ladle rating – should it be as described in Section 89.781(g), expressly including attained age rating, or as described in the Department's supporting analysis, where the only mention is of ladle rating?

The Department has considerable powers to investigate insurer practices and to prohibit practices it believes are improper. But prohibiting ladle rating by a revision to this regulation, absent any administrative findings or results from other states or jurisdictions, seems beyond the authority given to it in the acts it cites - especially since it includes a reversal of a different rating practice it is currently allowing.

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Thank you for the opportunity to comment on this. We again emphasize our support for the bulk of the proposed regulation. We welcome the chance to resolve the concerns with Section 89.781(g) and to get the other revisions enacted as soon as possible.

Sincerely,

Samuel R. Marshall