STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

In the matter of:

Order No. 2023-17-M

Medicare Supplement Guaranteed Issue:
Public Health Emergency Medicaid Redeterminations
_____/

Issued and entered
this 11th day of April 2023
by Anita G. Fox
Director

ORDER REGARDING MEDICARE SUPPLEMENT POLICY GUARANTEED ISSUE RIGHTS AND OPEN ENROLLMENT PERIOD

In March 2020, in response to the federal declaration of a Public Health Emergency (PHE), the United States Department of Health and Human Services and the Centers for Medicare & Medicaid Services (CMS) temporarily waived certain Medicaid and Children's Health Insurance Program requirements and conditions and required state Medicaid programs to similarly suspend redeterminations of Medicaid eligibility. As a result, since March 2020, the Michigan Department of Health and Human Services (MDHHS) has not disenrolled or terminated Michigan Medicaid enrollees who would otherwise have become ineligible for Medicaid, including because they became eligible for Medicare.

On April 1, 2023, Medicaid redeterminations will resume on a rolling basis. As a result, MDHHS will be required to, among other things, transfer Medicaid enrollees into Medicare if they meet Medicare eligibility requirements. See State Health Official Letter #22-001. Ordinarily, individuals who become eligible for Medicare have guaranteed issue rights with respect to Medicare Supplement policies issued during an initial open enrollment period. See MCL 500.3830. However, some Medicaid enrollees who became eligible for Medicare during the PHE might have missed the Medicare Supplement open enrollment window.

In order to ensure that these individuals have access to affordable Medicare Supplement policies, as they otherwise would have in the absence of the PHE, the Director concludes that these individuals are eligible

for a guaranteed issue rights and an open enrollment period under Chapter 38 of the Insurance Code (Code), MCL 500.3801 through 500.3861.

Under the Code, individuals who become eligible for Medicare are eligible to enroll in a Medicare Supplement plan during an open enrollment period. See MCL 500.3830. During that period, Medicare Supplement insurers are required to enroll applicants and are prohibited from discriminating in the pricing of the Medicare Supplement policies on the basis of the applicant's health status. *Id.* The Director concludes that these provisions apply to applicants for Medicare Supplement policies who:

- As of the date of application for a Medicare Supplement policy, are enrolled in Medicare Part B;
- Remained enrolled in Medicaid due to the suspension of redeterminations during the PHE and were not disenrolled or terminated until at least six months following the effective date of enrollment in Medicare Part B, or enrolled in Part B for the first time upon termination of the temporary Medicaid continuous coverage;
- Apply for a Medicare Supplement policy during the 63 days following the later of: 1) the notice of termination or disenrollment from Medicaid or 2) the date of termination from Medicaid; or apply during the six-month period following the first day of the first month in which the applicant is enrolled in Part B; and
- Submit documentation issued by MDHHS of the date of the applicant's termination or disenrollment from Medicaid with the application for a Medicare Supplement policy.

THEREFORE, IT IS ORDERED THAT all insurers writing Medicare Supplement policies in Michigan offer those policies on a guaranteed issue basis to applicants who meet the above-listed criteria (including those with both Medicaid and Medicare policies, referred to as "dual eligible" individuals). Insurers should treat these applicants as "eligible persons" pursuant to MCL 500.3830, and permit applicants to enroll in a Medicare supplement policy with guaranteed issue rights and an open enrollment period starting on the date of the

person's Medicaid eligibility change, as documented by MDHHS, and continuing for sixty-three (63) days after that date.

FURTHER, IT IS ORDERED that this order shall remain in place until 90 days after MDDHS completes all redeterminations related to the offering of continuous Medicaid coverage during the PHE.

Any violation of this order will result in appropriate administrative action.

/s/
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Anita G. Fox
Director