BUREAU OF INSURANCE

August 28, 1998

ADMINISTRATIVE LETTER 1998 - 9

TO: ALL INSURERS LICENSED TO WRITE ACCIDENT AND SICKNESS INSURANCE IN VRIGINIA, AND ALL HEALTH SERVICES PLANS AND HEALTH MAINTENANCE ORGANIZATIONS LICENSED IN VIRGINIA

RE: Amendments to Rules Governing Minimum Standards for Medicare Supplement Policies

The federal Balanced Budget Act of 1997 (BBA) (Public Law 105-33, August 5, 1997), establishes a new Part C in Medicare (Medicare+Choice) and creates additional standards for Medicare supplement insurance policies. Section 4031(e) of the BBA provides that states will have one year from the date the NAIC modifies its Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (Model regulation) to revise their statutes and/or regulations. The NAIC completed its revision of the Model regulation on April 29, 1998; as such states have until April 29, 1999 to revise their regulations and/or statutes. Although Virginia has until April 29, 1999 to amend its **Rules Governing Minimum Standards for Medicare Supplement Policies** (14 VAC 5-170-10 et seq.), insurance companies issuing Medicare supplement policies in this Commonwealth are subject to the Medicare supplement provisions in the BBA regardless of the status of Virginia's regulation.

The BBA requires the following changes to Medicare supplement insurance policies effective July 1, 1998:

- Guaranteed issue without preexisting conditions for continuously covered individuals (guaranteed issue)

- Limitation on imposition of preexisting condition exclusion during initial open enrollment period (preexisting condition exclusion)

The additional new High Deductible Medicare Supplement Policies (High Deductible Plan F and High Deductible Plan J) will not be required to be offered in Virginia until Virginia amends its regulation. The amended regulation will also include changes and additions to the disclosure statements.

With regard to the guaranteed issue provision of the BBA, **eligible persons** means those individuals who apply to enroll under the policy not later than 63 days after the date of termination of enrollment and who submit evidence of the date of termination of enrollment or disenrollment with the application for a Medicare supplement policy. With respect to eligible persons, an issuer shall not:

1. Deny or condition the issuance or effectiveness of a Medicare supplement policy that is offered and is available for issuance to new enrollees by the issuer;
2. Discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; or
3. Impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

The limitation on imposition of preexisting condition exclusions applies to a policy issued during the six-month initial open enrollment period to an individual who is 65 years of age or older and who, as of the date of application for enrollment, has had a continuous period of creditable coverage of at least six months, in which case the policy may not exclude benefits based on a preexisting condition. If the period of creditable coverage is less than six months, any preexisting condition exclusion period must be reduced by the aggregate of the periods of creditable coverage. The manner of this reduction (currently a proportional day-for-day reduction) will be determined by the Secretary of Health and Human Services.

With regard to the preexisting condition exclusion provision of the BBA, **creditable coverage** means with respect to an individual, coverage of the individual provided under:

1. A group health plan;
2. Health insurance coverage;
3. Part A or Part B of Title XVIII of the Social Security Act (Medicare);
4. Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928;
5. Chapter 55 of Title 10 United States Code (CHAMPUS);

6. A medical care program of the Indian Health Service or of a tribal organization;
7. A state health benefits risk pool;
8. A health plan offered under Chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);
9. A public health plan as defined in federal regulation; and
10. A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e)).

Insurance companies issuing Medicare supplement policies are required to comply with the BBA on and after July 1, 1998.

All forms revised to comply with these requirements must be submitted to the Bureau of Insurance for approval prior to their use in the Commonwealth of Virginia. Insurance companies are obligated to follow the federal law regardless of the status of form filings with the Bureau of Insurance.

Questions regarding the contents of this letter should be directed to:

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Sincerely,

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Commissioner of Insurance