



CALIFORNIA HEALTH ADVOCATES

Supplementing Medicare: Your Rights to Purchase a Medigap Policy (2009)

This fact sheet describes your rights to purchase a Medigap plan during Open Enrollment and Guaranteed Issue periods. A Medigap plan is a way to supplement the benefits of the Original Medicare program. If you already have other health care benefits, such as a Medicare Advantage plan, or a retiree plan, or if you have full Medi-Cal benefits, you do not need to buy a Medigap policy. For more information about Medigap policies, please see our fact sheet “Supplementing Medicare: Medigap Plans” at cahealthadvocates.org.

Note: If you have permanent kidney failure, also known as End Stage Renal Disease or ESRD, AND you are younger than 65, none of the rights described in this fact sheet applies to you. See our fact sheet “Medicare and People with End Stage Renal Disease” at cahealthadvocates.org.

Guaranteed Issue and Open Enrollment periods give you a right to buy a Medigap policy when a company could otherwise refuse to sell you one due to a pre-existing health condition or your age. If you are relatively healthy, you may be able to buy a Medigap policy at any time as long as you pass a company’s health screening. Each company has different health screening requirements. Some companies’ health screening is extensive, some fairly minimal and others may even sell you a policy without health screening, unless you have ESRD.

In any case, knowing about Guaranteed Issue and Open Enrollment periods is important if you’d like to supplement your Medicare with a Medigap policy.

Insurance companies are not required to sell Medigap policies. If a company chooses to sell Medigap policies, the only plan they are required to sell is Plan A. Some companies choose to sell only a few Medigap plans, while others sell all 12

of the standardized plans plus two plans with a high deductible. Please see our fact sheet “Supplementing Medicare: Medigap Plans” at cahealthadvocates.org. Your choices in any of the events described in this fact sheet will be limited to those Medigap plans each company is selling where you live.

A. Open Enrollment

Open Enrollment period at 65 years of age and older

Open enrollment means that companies selling Medigap policies must sell you a plan without health screening and at the best price for your age. When you are 65 years old or older and are eligible for Medicare, you have up to 6 months to purchase any Medigap policy at the lowest price for your age, even if you have or recently had health problems.

Your 6-month Open Enrollment period for a Medigap policy starts on the date your Medicare Part B becomes effective. However, you can apply for a Medigap policy before the effective date of your Medicare Part B and request that the policy begin on the same date your Medicare benefits begin to avoid a gap in coverage.

If you became eligible for Medicare when you were younger than 65, you are also entitled to this 6-month Open Enrollment period starting the month of your 65th birthday regardless of any health conditions you may already have, including ESRD. If you already have a Medigap policy, you can keep it and get a lower premium when you turn 65, or you can take advantage of this right to get another Medigap from a different company that is more suitable to your needs. Contact your current company to let them know that you are 65 years old and ask them to lower your premium.

In California, if you were covered by an employer group health plan and you delayed enrollment in Medicare Part B because you or your spouse were actively employed, you also have a 6-month Open Enrollment period. When you enroll in Medicare Part B, this period begins on the effective date of your Part B coverage.

Note: If you also delayed enrollment in Medicare Part D, you have only 63 days to enroll in a Medicare Part D plan.

Open Enrollment period at ages younger than 65 years

In California, if you are younger than 65 and have Medicare because of a disability (but not ESRD), you have a 6-month Open Enrollment period beginning on the effective date of your Medicare Part B. If you are notified retroactively of your eligibility for Medicare, then your Open Enrollment period begins from the date of the notice you receive from Social Security of your right to Medicare benefits.

During the Open Enrollment period, you have the right to purchase Medigap plans A, B, C, or F. You can also choose H, I or J, or K or L, if the company sells any of those plans, but the company has the right to decide which of these plans it will sell you.

To avoid a gap in coverage, you may request that the Medigap policy become effective the same date as your Medicare benefits, or as soon after as is practical.

Note: Because companies have no restrictions on setting premiums, they can charge you a higher premium because of your health status than someone who is 65 years old or older.

Waiting period

Open enrollment rights mean that companies selling Medigap policies must sell you a plan without health screening. However, companies may impose a waiting period of up to 6 months for any health condition you had that was treated or diagnosed within 6 months before the date your Medigap coverage began. But if you had any health coverage, including Medicare, before purchasing a Medigap plan, the company must subtract those months from the waiting period.

For example, if you had coverage for only 3 months prior to purchasing a Medigap plan, the company must subtract 3 months from any waiting period that applies. A waiting period is limited to 6 months. Thus, if you had health coverage for 6 or more months before purchasing a Medigap plan, the company cannot impose any waiting period for pre-existing conditions.

Other Open Enrollment rights

In California, in addition to the Open Enrollment period following the effective date of your Medicare Part B, you also have the right to purchase a Medigap policy for 6 months following the events described below.

Event 1. When you have employer-sponsored group health coverage through your own, your spouse's, or a family member's current employment or retirement plan, and the plan terminates, OR you lose your eligibility to continue benefits due to divorce or the death of a spouse or other family member. The 6-month period to apply for a Medigap policy starts on the date that you receive the notice that your health benefits will end. If you do not receive a notice in advance, then the 6-month period starts the date the benefits actually end, or the date of your first denied claim. This protection of California law applies regardless of whether your group health benefits were primary or secondary to Medicare.

Note: You are also entitled to this protection when you have used up all the COBRA benefits for which you are eligible. For more information on COBRA, see our fact sheet "Medicare and Other Health Insurance Coverage" at cahealthadvocates.org.

Event 2. When you move out of the geographic area served by your Medigap plan. For instance, if you have a Medigap you bought while living in another state that will not cover you in this state, you have 6 months to replace that policy without health screening.

Event 3. When your health care coverage ends because of a military base closure, or because a military base no longer offers health care services, you move away from

the base, or you are no longer eligible to receive health care services at that base.

Event 4. When you lose your eligibility for Medi-Cal benefits because of an increase in your income or assets, or you are required to pay a Share of Cost before Medi-Cal will pay for your care.

Note: For the 4 events mentioned above, your choice of Medigap plans depends on your age. If you are 65 years old or older, you can choose from all of the Medigap plans that are available for sale from any company in your geographical area. If you are younger than 65 years old (and you do not have ESRD), you can choose A, B, C, or F. You can also choose H, I or J, or K or L, if the company sells any of those plans, but the company has the right to decide which of these plans it will sell you. Please see our fact sheet “Supplementing Medicare: Medigap Plans” at cahealthadvocates.org for a description of these plans and high deductible options.

B. Guaranteed Issue

Guaranteed issue rights mean that companies selling Medigap policies must sell you one of the required plans without health screening, without a waiting period due to pre-existing conditions, and at the best price for your age. In general, the time period in which you can choose another policy is shorter than during an Open Enrollment period, and you may have fewer choices. Not all insurance companies sell all 12 Medigap plans and the two high deductible options, and some companies may not even sell all of the Medigap plans that you are allowed to buy. Please see our fact sheet “Supplementing Medicare: Medigap Plans” at cahealthadvocates.org for a description of these plans.

Following the events described below, people with Medicare are guaranteed the right to buy certain Medigap policies. You can usually apply for one of these guaranteed issued Medigaps as early as 60 days *before* your coverage will end to avoid any lapse in coverage. In most cases, you only have 63 days to apply for one of these Medigaps *after* your health care coverage ends as a result of one of these events. You must usually also provide a letter or other evidence of

the date that your other coverage will end or has ended when you submit your application.

The events described below apply to Medicare beneficiaries of all ages, except those younger than 65 with ESRD. For most of the events listed below, the only Medigap plans you are guaranteed the right to buy are plans A, B, C, F, (including F with a high deductible), K, or L from any company that sells one these plans.

Event 1. When your employer-sponsored retiree health plan supplementing Medicare involuntarily terminates. This federal law applies a limited right to employer-sponsored retiree plans, including COBRA coverage. However, it applies only when those health benefits act as a supplement to Medicare. It does not apply if your health plan provided primary health benefits. This right also does NOT apply if you stop paying your premium for the retiree plan or COBRA coverage because the premiums became too expensive. California law, discussed above in Event 1 under “Other Open Enrollment Rights” of this fact sheet, is broader and provides more protection in this situation.

Event 2. When your employer-sponsored health plan supplementing Medicare reduces benefits, you lose your eligibility for continued coverage, or your plan no longer pays the Part B 20 percent coinsurance. This law applies when your employer-sponsored retiree plan stops providing supplemental benefits to Medicare, but continues providing some benefits.

Event 3. When your Medicare Advantage (MA) plan increases your cost sharing, reduces your benefits, or the plan terminates its relationship with a medical provider who is treating you. You have the right to buy a Medigap plan only from the same MA organization in which you are enrolled, if it sells one, or from the parent company or network that contracts with the MA plan. (MA plans are health plans that provide Medicare-covered services and are available to Medicare beneficiaries through commercial companies. See our fact sheet “Medicare Advantage (Medicare Part C): An Overview” at cahealthadvocates.org.)

You have 63 days to purchase one of the guaranteed issue Medigap policies from the time you are notified of any reduction of benefits, increases in cost sharing, or that the plan is no longer contracting with a medical provider treating you. However, you must at the same time be certain you are allowed to disenroll from the MA plan under federal Medicare regulations.

Since MA plans may not reduce their benefits or increase cost sharing during the plan year, any reduction in benefits or increase in cost sharing for the new plan year will coincide with the Annual Election Period (AEP) which allows you to disenroll from your Medicare Advantage plan. The AEP is November 15 – December 31 of each year. If you disenroll during this period, the effective date of your disenrollment will be January 1 of the following year. For more information, see CHA fact sheet on “Medicare Enrollment Periods” at cahealthadvocates.org.

An MA plan may, however, discontinue its contract with a provider anytime during the year. This means, even though you may have a guaranteed issue right to buy a Medigap when a provider no longer has a contract with your MA plan, you may not have a corresponding federal right to disenroll from that MA plan.

Event 4. When you move out of the service area of your Medicare Advantage plan or Program for All-Inclusive Care for the Elderly (PACE) organization. You have the right to buy a Medigap policy even when Medicare Advantage plans are available in your new location.

Event 5. When your Medicare Advantage plan, Medicare SELECT* Medigap Plan, PACE provider, or any other health plan under contract with Medicare commits fraud, ends or loses their contract with Medicare, or misrepresents the contract you bought. You have the right to buy a Medigap policy if the federal government determines that the company failed to meet its contractual obligations to Medicare beneficiaries.

***Note:** Medicare SELECT plans are a hybrid Medigap policy combined with a Preferred Provider Organization (PPO), which encourages its member to use its network of providers for covered services.

Event 6. Medicare Trial Period #1, at age 65: When you are first eligible for Medicare at age 65 and enroll in a Medicare Advantage plan or with a Program for All-Inclusive Care for the Elderly (PACE) organization and then disenroll within the first 12 months you can choose from any Medigap policy that is available for sale.

Event 7. Medicare Trial Period #2, for people with a Medigap policy: When you give up a Medigap plan to enroll in any of the following for the very first time: Medicare Advantage plan, any PACE organization, a Medicare SELECT Medigap plan, or any other health care organization contracting with Medicare to provide Medicare-covered services, and then disenroll within the first 12 months. You have the option to return to your previous Medigap plan, if it is still available. If it is not available, you can choose from plans A, B, C, F, K or L from your current insurance company or from another company.

Note: A person who has been in a Medicare Advantage plan more than once is not eligible for the guaranteed issue right described in Events 6 and 7.

Also note: You do NOT have a guaranteed issue right if you have been enrolled in a Medicare Advantage plan for more than 12 months even if you go back to Original Medicare during the Medicare Annual Election Period (AEP) that happens at the end of each year. You only have this right if your situation matches one of the two Medicare Trial Periods described in Events 6 and 7 of this fact sheet.

C. Other Guaranteed Issue or Open Enrollment Periods Under California Law

Below are listed more events that are specific to California law and allow for additional enrollment periods. Each of these events has a different time limit to exercise your rights.

Event 1. When your Medicare Advantage plan leaves your geographic area. This applies when your Medicare Advantage plan leaves the area or the zip code where you live.

You have the right to apply for Medigap plans A, B, C, F, K or L. You can apply anytime after the Medicare Advantage plan first notifies you that they are leaving or that you will no longer be eligible for benefits. You have up to 123 days after your Medicare Advantage plan benefits actually end to apply for a guaranteed issue Medigap policy. But you only have 63 days to replace prescription drug benefits if they were included in your Medicare Advantage plan benefits.

Event 2. If you already have a Medigap policy, each year for a 30-day period starting on your birthday, you can replace your current policy with one that has the same or fewer benefits. You can choose another plan from the same company or any other company selling Medigap policies, but you are limited to one that has the same or fewer benefits than the plan you already have. For example, if you already have Plan C, you may switch to any other Plan C, from the same or a different company. You do NOT have this right unless you already have a Medigap policy on your birthday.

Medi-Cal (California's Medicaid Program) and Medigap Policies

If you have full Medi-Cal benefits, you do not need a Medigap policy and it is illegal for companies to sell you one. However, there are a few exceptions: You may get a Medigap policy if you have Medi-CAL with a share of cost (SoC); or Medi-CAL pays your Medicare Part B premium only (e.g. Specified Low Income Beneficiary or Qualified Individual programs); or Medi-CAL decides to pay your Medigap premium (Health Insurance Premium Payment program).

If you already own a Medigap policy and then become eligible for Medi-Cal, you are allowed to keep it if you want to use it with medical providers that don't take Medi-Cal. Or, you can notify the insurance company and place your Medigap benefits on "hold" for up to 24 months. If you lose Medi-Cal before the end of this period, you can reinstate your Medigap policy. You must notify the company within 90 days of losing your Medi-Cal benefits. You can get your policy reinstated, or get another one like it. You will only be charged a premium from the date your Medigap benefits are reinstated or a new policy

is issued. For more information, see our fact sheets "Low Income Assistance: Medi-Cal" and "Low Income Assistance: Medicare Savings Programs" at cahealthadvocates.org.

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The fact sheet contains general information and should not be relied upon to make individual decisions. In some situations you may be faced with more than one right that applies at the same time.

If you would like to discuss your specific situation and choices, call the Health Insurance Counseling and Advocacy Program (HICAP). HICAP provides free and objective information and counseling on Medicare and can help you understand your specific rights and health care options. You can call **1-800-434-0222** to make an appointment at the HICAP office nearest you.