

1 **836-052-0114 (Amended)**

2 **Applicability and Scope**

3 (1) Except as otherwise specifically provided in OAR 836-052-0134, 836-052-0140, 836-052-
4 0145, 836-052-0160 and 836-052-0185, 836-052-0103 to 836-052-0194 apply to the following
5 Medicare supplement policies and certificates issued under group Medicare supplement policies,
6 as follows:

7 (a) All Medicare supplement policies delivered or issued for delivery in this state on or after July
8 1, 1992; and

9 (b) All certificates issued under group Medicare supplement policies and delivered or issued for
10 delivery in this state on or after July 1, 1992.

11 (2) Except as otherwise specifically provided in OAR 836-052-0134, 836-052-0140, 836-052-
12 0154, 836-052-0160, and 836-052-0185, on or after September 1, 1993, 836-052-0103 to 836-
13 052-0194 apply to Medicare supplement policies and certificates issued under group Medicare
14 supplement policies that are made subject to 836-052-0103 to 836-052-0194 because of
15 amendments to the definition of "Medicare supplement policy" in ORS 743.680 and OAR 836-
16 052-0119.

17 (3) A prepayment plan offered by a health maintenance organization under which the health
18 maintenance organization and competitive medical plans provides Medicare services under the
19 authority of Title XVIII Part C of the Social Security Act or Section 1876 of the federal Social
20 Security Act (42 U.S.C. section 1395 et seq.) is not subject to OAR 836-052-0103 through 836-
21 052-0194. The health maintenance organization and competitive medical plans must file with the
22 Director, for information purposes, a copy of the Medicare contract forms and rates that the plan
23 or health maintenance organization uses in this state, and the marketing and sales materials used
24 therewith.

25 (4) OAR 836-052-0103 to 836-052-0194 do not apply to an issued policy under a demonstration
26 project specified in 42 U.S.C. sec. 1395ss (g)(1).

27 (5) OAR 836-052-0103 to 836-052-0194 do not apply to a policy or contract of one or more
28 employers or labor organizations; or of the trustees of a fund established by one or more
29 employers or labor organizations, or combination thereof; for employees or former employees, or
30 a combination thereof; or for members or former members, or a combination thereof, of the labor
31 organizations.

32 (6) OAR 836-052-0103 to 836-052-0194 are effective on August 1, 2005. Insurers may continue
33 using current forms, or may make changes to current forms if offering Plan K or L, as
34 appropriate, through 2005. Insurers may offer any authorized plan upon approval by the Director
35 of the Department of Consumer and Business Services.

1 (7) The changes to OAR 836-052-0145 and 836-052-0151 [*and Exhibits to OAR 836-052-0160*]
2 effective on February 17, 2011 apply to all **new** Medicare supplement policies or certificates
3 issued on or after July 1, 2011. **The changes to OAR 836-052-0145 and 836-052-0151 effective**
4 **on February 17, 2011 apply to all existing 1990 Standardized Medicare supplement benefit**
5 **plans and all 2010 Standardized Medicare supplement benefit plans policies or certificates**
6 **renewed on or after January 1, 2012. The changes to the Exhibits to OAR 836-052-0160**
7 **effective on February 17, 2011 apply to all Medicare supplement policies or certificates**
8 **issued on or after July 1, 2011.**

9 Stat. Auth.: ORS 731.244 & 743.682

10 Stats. Implemented: ORS 743.010 & 743.683

11 Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990,
12 f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert.
13 ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997,
14 f. & cert. ef. 7-10-97; ID 10-2005, f. & cert. ef. 7-26-05; ID 7-2011, f. & cert. ef. 2-23-11

15 **836-052-0145 (Amended)**

16 **Loss Ratio Standards and Refund or Credit of Premium**

17 (1) The following provisions of this section establish loss ratio standards:

18 (a) A Medicare supplement policy form or certificate form shall not be delivered or issued for
19 delivery unless the policy form or certificate form can be expected, as estimated for the entire
20 period for which rates are computed to provide coverage, to return the applicable percentage
21 specified in this section to the policyholder and certificate holder in the form of aggregate
22 benefits, not including anticipated refunds or credits, provided under the policy form or
23 certificate form:

24 (A) At least 75 percent of the aggregate amount of premiums earned, in the case of group
25 policies; or

26 (B) At least 65 percent of the aggregate amount of premiums earned, in the case of individual
27 policies.

28 (b) A percentage under subsection (a) of this subsection shall be calculated on the basis of
29 incurred claims experience or incurred health care expenses where coverage is provided by a
30 health maintenance organization on a service rather than reimbursement basis and earned
31 premiums for the period and in accordance with accepted actuarial principles and practices.
32 Incurred health care expenses where coverage is provided by a health maintenance organization
33 shall not include:

34 (A) Home office and overhead costs;

35 (B) Advertising costs;

1 (C) Commissions and other acquisition costs;

2 (D) Taxes;

3 (E) Capital costs;

4 (F) Administrative costs; and

5 (G) Claims processing costs.

6 (c) All filings of rates and rating schedules shall demonstrate that expected claims in relation to
7 premiums comply with the requirements of this rule when combined with actual experience to
8 date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire
9 future period for which the revised rates are computed to provide coverage can be expected to
10 meet the appropriate loss ratio standards;

11 (d) For purposes of applying section (1)(a) of this rule and section (3)(c) of OAR 836-052-0151
12 only, policies issued as a result of solicitations of individuals through the mails or by mass media
13 advertising (including both print and broadcast advertising) shall be deemed to be individual
14 policies;

15 (e) For policies issued prior to September 1, 1993, expected claims in relation to premiums shall
16 meet:

17 (A) The originally filed anticipated loss ratio when combined with the actual experience since
18 inception;

19 (B) The appropriate loss ratio requirement from section (1)(a)(A) and (B) of this rule when
20 combined with actual experience beginning with April 28, 1996, to date; and

21 (C) The appropriate loss ratio requirement from section (1)(a)(A) and (B) of this rule over the
22 entire future period for which the rates are computed to provide coverage.

23 (2) The following provisions of this section apply to refund and credit calculations:

24 (a) An issuer shall collect and file with the Director by May 31 of each year the data contained in
25 the applicable reporting form contained in Exhibit 1 to this rule for each type in a standard
26 Medicare supplement benefit plan;

27 (b) If on the basis of the experience as reported, the benchmark ratio since inception (ratio 1)
28 exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation
29 is required. The refund calculation shall be done on a statewide basis for each type in a standard
30 Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience
31 on policies issued within the reporting year shall be excluded;

1 (c) For the purpose of this rule, policies or certificates issued prior to September 1, 1993, the
2 issuer shall make the refund or credit calculation separately for all individual policies, including
3 all group policies subject to an individual loss ratio standard when issued, combined and all other
4 group policies combined for experience after April 28, 1996. The first such report shall be due by
5 May 31, 1998.

6 (d) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted
7 experience loss ratio and the amount to be refunded or credited exceeds a negligible level. The
8 refund must include interest from the end of the calendar year to the date of the refund or credit
9 at a rate specified by the Secretary of Health and Human services, but in no event shall it be less
10 than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums
11 due shall be made by September 30 following the experience year upon which the refund or
12 credit is based.

13 (3) An issuer of Medicare supplement policies and certificates issued before, on or after July 1,
14 1992, in this state shall file annually its rates, rating schedule and supporting documentation,
15 including ratios of incurred losses to earned premiums by policy duration for approval by the
16 Director in accordance with the filing requirements and procedures prescribed by the Director.
17 The supporting documentation shall also demonstrate in accordance with actuarial standards of
18 practice using reasonable assumptions that the appropriate loss ratio standards can be expected to
19 be met over the entire period for which rates are computed. The demonstration shall exclude
20 active life reserves. An expected third year loss ratio that is greater than or equal to the
21 applicable percentage shall be demonstrated for policies or certificates in force less than three
22 years. As soon as practicable, but prior to the effective date of enhancements in Medicare
23 benefits, every issuer of Medicare supplement policies or certificates in this state shall file with
24 the Director for approval, in accordance with the applicable filing procedures of this state the
25 following:

26 (a)(A) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the
27 current premium for the applicable policies or certificates. Supporting documents necessary to
28 justify the adjustment shall accompany the filing.

29 (B) An issuer shall make premium adjustments necessary to produce an expected loss ratio under
30 the policy or certificate to conform to minimum loss ratio standards for Medicare supplement
31 policies and to be expected to result in a loss ratio at least as great as that originally anticipated in
32 the rates used to produce current premiums by the issuer for the Medicare supplement policies or
33 certificates. No premium adjustment that would modify the loss ratio experience under the policy
34 other than the adjustments described herein shall be made with respect to a policy at any time
35 other than upon its renewal date or anniversary date. Except as provided in OAR 836-052-0138,
36 an insurer may not increase the rates for a Medicare supplement policy or certificate issued in
37 this state more than once in a 12-month period. If an issuer intends to exercise the right to adjust
38 a premium for age attainment under OAR 836-052-0138, and such adjustment results in more
39 than one increase in a 12-month period, the issuer must provide written disclosure to the
40 consumer prior to the issuance of the policy or certificate. **The limitation on premium**
41 **adjustments under this paragraph does not apply to a premium adjustment that results**
42 **from a change in the policy or premium payment terms requested by an insured including**

1 **but not limited to changes in the method of payment such as discontinuing payment by a**
2 **preauthorized electronic funds transfer.**

3 (C) If an issuer fails to make premium adjustments acceptable to the Director, the Director may
4 order premium adjustments, refunds or premium credits that the Director considers necessary to
5 achieve the loss ratio required by this rule.

6 (b) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare
7 supplement policy or certificate modifications necessary to eliminate benefit duplications with
8 Medicare. The riders, endorsements or policy forms shall provide a clear description of the
9 Medicare supplement benefits provided by the policy or certificate.

10 (4) For purposes of this rule, experience of insureds who qualify for Medicare by reason of
11 disability shall be combined with experience of insureds who qualify for Medicare by reason of
12 age.

13 (5) The Director may conduct a public hearing to gather information concerning a request by an
14 issuer for an increase in a rate for a policy form or certificate form issued before, on or after July
15 1, 1992, if the experience of the form for the previous reporting period is not in compliance with
16 the applicable loss ratio standard. The determination of compliance may be made without
17 consideration of any refund or credit for the reporting period. Public notice of the hearing shall
18 be furnished as the Director determines to be appropriate.

19 [ED. NOTE: Exhibits referenced are available from the agency.]

20 Stat. Auth.: ORS 743.684

21 Stats. Implemented: ORS 743.010 & 743.684

22 Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990,
23 f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert.
24 ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997,
25 f. & cert. ef. 7-10-97; ID 8-2001(Temp), 6-15-01, cert. ef. 6-18-01 thru 12-10-01; ID 11-2001, f.
26 & cert. ef. 9-24-01; ID 10-2005, f. & cert. ef. 7-26-05; ID 7-2011, f. & cert. ef. 2-23-11

27 **836-052-0151 (Amended)**

28 **Filing and Approval of Policies and Certificates and Premium Rates**

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

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

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

5 (b) Except for an adjustment of premium on the basis of attained age under OAR 836-052-0138,
6 an issuer may not increase the rates for a Medicare supplement policy or certificate issued in this
7 state more than once in a 12-month period. Annual rate increases shall be effective on the policy
8 or certificate anniversary date or renewal date. If an issuer intends to exercise the right to adjust a
9 premium for age attainment under OAR 836-052-0138, and such adjustment results in more than
10 one increase in a 12-month period, the issuer must provide written disclosure to the consumer
11 prior to the issuance of the policy or certificate. **The limitation on premium adjustments**
12 **under this subsection does not apply to a premium adjustment that results from a change**
13 **in the policy or premium payment terms requested by an insured including but not limited**
14 **to changes in the method of payment such as discontinuing payment by a preauthorized**
15 **electronic funds transfer.**

16 (4) Except as provided in this section, an issuer shall not file for approval more than one form of
17 a policy or certificate of each type for each standard Medicare supplement benefit plan. For the
18 purposes of this section, a "type" means an individual policy or a group policy. An issuer may
19 offer, with the approval of the Director, not more than four additional policy forms or certificate
20 forms of the same type for the same standard Medicare supplement benefit plan, one for each of
21 the following cases:

22 (a) The inclusion of new or innovative benefits;

23 (b) The addition of either direct response or agent marketing methods;

24 (c) The addition of either guaranteed issue or underwritten coverage.

25 (5) The following applies to continuance and discontinuance of Medicare supplement policies
26 and certificates:

27 (a) Except as provided in this subsection, an issuer shall continue to make available for purchase
28 any policy form or certificate form issued after July 1, 1992, that has been approved by the
29 Director. A policy form or certificate form shall not be considered to be available for purchase
30 unless the issuer has actively offered it for sale in the previous twelve months. The following
31 applies to discontinuance of a policy form or certificate form to which this subsection applies:

32 (A) An issuer may discontinue the availability of a policy form or certificate form for new issues
33 if the issuer provides to the Director in writing its decision at least 30 days prior to discontinuing
34 the availability of the form of the policy or certificate. After receipt of the notice by the Director,
35 the issuer shall no longer offer for sale the policy form or certificate form in this state. The issuer
36 must continue to renew outstanding policies and certificates;

1 (B) An issuer that discontinues the availability of a policy form or certificate form pursuant to
2 paragraph (A) of this subsection shall not file for approval a new policy form or certificate form
3 of the same type for the same standard Medicare supplement benefit plan as the discontinued
4 form for a period of five years after the issuer provides notice to the Director of the
5 discontinuance. The period of discontinuance may be reduced if the Director determines that a
6 shorter period is appropriate.

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

9 (c) A change in the rating structure or methodology shall be considered a discontinuance under
10 subsection (a) of this section unless the issuer complies with the following requirements:

11 (A) The issuer provides an actuarial memorandum satisfactory to the Director, in a form and
12 manner prescribed by the Director, describing the manner in which the revised rating
13 methodology and resultant rates differ from the existing rating methodology and existing rates;

14 (B) The issuer does not subsequently put into effect a change of rates or rating factors that would
15 cause the percentage differential between the discontinued and subsequent rates as described in
16 the actuarial memorandum to change. The Director may approve a change to the differential that
17 is in the public interest.

18 (6) Except as provided in this section, the experience of all policy forms or certificate forms of
19 the same type in a standard Medicare supplement benefit plan shall be combined for purposes of
20 the refund or credit calculation prescribed in OAR 836-052-0145. Forms assumed under an
21 assumption reinsurance agreement shall not be combined with the experience of other forms for
22 purposes of the refund or credit calculation.

23 Stat. Auth.: ORS 743.683

24 Stats. Implemented: ORS 743.010, 743.684(1) - (2) & 743.683(2)

25 Hist.: ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993,
26 f. 9-28-93, cert. ef. 10-1-93; ID 2-1995, f. & cert. ef. 4-26-95; ID 10-2005, f. & cert. ef. 7-26-05;
27 ID 7-2011, f. & cert. ef. 2-23-11

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