

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code chapters 505, 513C, and 514E, the Insurance Division hereby adopts Chapter 82, “Iowa Stopgap Measure,” Iowa Administrative Code.

The rules in Chapter 82 are intended to implement a program developed by the Insurance Division, the Iowa Stopgap Measure, which was designed to provide an innovative solution to temporarily stabilize Iowa’s individual health insurance market. The Iowa Stopgap Measure was first submitted by the Insurance Division on June 7, 2017, to the Centers for Medicare and Medicaid Services (CMS) as a waiver application under Section 1332 of the Patient Protection and Affordable Care Act (ACA) (42 U.S.C. Section 18052). The Insurance Division continues to work with CMS to develop the waiver application and will be finalizing the application for submittal by the end of August 2017.

The instability of Iowa’s individual ACA-compliant market was first marked with the liquidation of CoOpportunity Health, Inc., which began with an order of rehabilitation on December 23, 2014, and the market has seen continued instability. On April 25, 2016, UnitedHealthcare notified the Insurance Division that it would not offer individual ACA-compliant plans in 2017. Then, on March 30, 2017, Wellmark, Inc. and Wellmark Health Plan of Iowa, Inc. notified the Insurance Division that they would not offer individual ACA-compliant plans in 2018. On April 6, 2017, Aetna, Inc. notified the Insurance Division that it would not offer individual ACA-compliant plans in 2018. Finally, before Iowa’s rate filing deadline, June 19, 2017, Wellmark Value Health, Wellmark Synergy Health and Gundersen Health Plan, Inc. informed the Insurance Division that they will not offer individual ACA-compliant plans in 2018.

On June 19, 2017, Medica, a Minnesota-based health insurance company that first sold individual health insurance policies in Iowa in 2016, filed ACA-compliant plans for approval by the Insurance Division to be available on the ACA-compliant individual health insurance marketplace in 2018 in all of Iowa’s 99 counties. The premium rates that Medica filed with the Insurance Division have an average increase of 43.5 percent over Medica’s 2017 rates. No other carriers filed rates for the ACA-compliant individual health insurance marketplace for 2018.

The premium rates filed by Medica will drive healthier, younger, and middle-aged individuals out of the market, which will sink Iowa’s market further into collapse. This dramatic proposed premium rate increase will mean that, for some consumers, premiums will increase almost 100 percent from their current 2017 premium rates. It is likely that many individuals who are not currently receiving federal subsidies (those whose household income is above 400 percent of federal poverty level) will be unable to afford the cost of the Medica rates as filed and thus will drop from the market. The Insurance Division estimates that the health insurance premium costs for a family of four with a total household income at this federal poverty level (which is approximately \$98,000) would be almost \$24,000 under the rates filed by Medica for 2018. These rates simply are not affordable for a working class family or small business owner. It is plausible that individuals could refuse a promotion, quit a primary or secondary job, or take other steps to lower their household income in order to be eligible for federal subsidies. These rates will directly impact the ability of small business owners, the majority of whom participate in the individual commercial health insurance market, to continue to sustain and grow their own businesses.

Governor Kim Reynolds asked the Insurance Division to develop a solution to provide temporary stability to the individual health insurance market and ensure that the approximately 72,000 Iowans currently covered through the individual health insurance market would have coverage options for 2018. The Insurance Division, in response to its directive from the Governor and under the authority of Iowa Code chapters 505, 513C and 514E, developed the Iowa Stopgap Measure as a proposed Section 1332 application to CMS and the Department of the Treasury to waive certain provisions of the ACA.

The federal government, through CMS and the Department of the Treasury, has the authority under Section 1332 of the ACA to grant to a state a waiver to implement innovative strategies to provide the state’s residents with access to high-quality, affordable health coverage. These waivers allow states to

implement innovative ways to provide access to quality health care that: (1) are at least as comprehensive and affordable as would be provided absent a waiver; (2) provide coverage to a comparable number of residents of the state as would be provided coverage absent a waiver; and (3) do not increase the federal deficit.

The Iowa Stopgap Measure is designed to facilitate the implementation of a reinsurance program, a per-member, per-month premium credit mechanism, and a standardized health benefits plan to be offered to all eligible Iowa consumers for the plan year 2018. Iowa's waiver application asks CMS to use the Insurance Division and the existing Iowa Individual Health Benefit Reinsurance Association (IIHBRA) as administrators of a pass-through of the federal funding that would be allocated to Iowa consumers via the existing Advanced Premium Tax Credit (APTC) and Cost-Sharing Reduction (CSR) funding under the ACA to be used by Iowa for a reinsurance program and per-member, per-month premium credits. That is, federal funds allocated by CMS would be paid to the Insurance Division or IIHBRA, and the Insurance Division would, in compliance with the Iowa Stopgap Measure, disburse the funds accordingly. The Insurance Division intends that this program will be completely funded by the federal funds allocated to Iowa.

The Insurance Division has been working diligently with CMS to develop and finalize the waiver application, which will be submitted in mid-August. The Insurance Division developed the Iowa Stopgap Measure, with advice and support from several insurance companies and other entities, to establish conditions which would support reentry of insurance carriers into the individual health insurance market and at rates that are affordable to consumers. The Iowa Stopgap Measure has three primary means of doing this.

First, it implements a reinsurance program under the IIHBRA to support the costs associated with consumers enrolled in the Iowa Stopgap Measure who have annual claims costs of over \$100,000. Providing support for these high-cost claimants will help the carriers keep monthly premium rates down for all consumers under the Iowa Stopgap Measure.

Second, the Iowa Stopgap Measure will replace the current premium subsidy structure with a per-member, per-month premium credit that will be available for all eligible Iowa consumers based on their age and income. These credits will be paid directly to the carriers via funds paid by the federal government and passed through the Insurance Division or the Iowa Comprehensive Health Association (HIPIOWA), and are intended to keep monthly costs low to entice young and healthy individuals back into the market.

Third, the Iowa Stopgap Measure would allow for a single, standard health benefits plan to be offered to all eligible Iowa consumers for the plan year 2018. Having a single, standard health benefits plan that provides coverage for all of the essential health benefits defined by the ACA as well as all Iowa-mandated benefits ensures that consumers will be able to purchase coverage as comprehensive as that which is currently offered in the individual health insurance market. The use of a single plan also provides administrative simplicity, which, given the implementation timeline, is critical to entice health insurance carriers back to the market.

In compliance with Iowa Code section 17A.4(3), these rules are filed emergency because immediate adoption of the rules is necessary to implement the Iowa Stopgap Measure in time for the 2018 open enrollment period beginning on November 1, 2017, and delays caused by the notice and public participation requirements of Iowa Code section 17A.4 would be contrary to public interest. The Insurance Division finds that the availability and affordability of individual commercial health insurance is critical for the greater public interest, and the necessity of ensuring that coverage will be available in 2018 requires these rules to be immediately implemented.

Insurance carriers who will participate in the Iowa Stopgap Measure will need several months to prepare the application procedures and internal processes necessary to facilitate the purchase of coverage for all enrollees prior to the open enrollment date of November 1, 2017. The insurance carriers also need to prepare plan documents, develop the electronic application, finalize coverage networks, and file the rates and forms for Insurance Division review and approval. The Insurance Division needs to work with various entities to coordinate the eligibility verification process, develop a consumer education program, coordinate funding mechanisms with the federal government, and review and approve all rate and form

filings made by carriers who want to participate in the program. Review of filings by the staff at the Insurance Division is a process that takes several weeks to complete for each carrier and filing.

The Insurance Division made its proposal for the Iowa Stopgap Measure public on June 12, 2017, opened a formal public and tribal comment period on July 13, 2017, and accepted public comments on the Iowa Stopgap Measure in writing by mail and through a Web form through August 14, 2017. These materials are all available on the Insurance Division's Web site at <https://iid.iowa.gov/press-releases/iowa-seeks-federal-approval-of-health-insurance-stopgap-measure> and <https://iid.iowa.gov/press-releases/notice-of-public-hearings-for-iowa-stopgap-measure>. As part of the formal public comment period, the Insurance Division held three public hearings on the Iowa Stopgap Measure (in Council Bluffs on July 19, 2017; in Des Moines on August 2, 2017; and in Cedar Rapids on August 10, 2017).

The Insurance Division submitted these rules to the Administrative Rules Review Committee, seeking its approval that the situation described above constitutes good cause that notice and publication would be unnecessary, impracticable, or contrary to public interest, as required by Iowa Code section 17A.4(3)"a," such that the provisions of Iowa Code section 17A.4(1) would be inapplicable. In compliance with Iowa Code section 17A.4(3), the Administrative Rules Review Committee at its August 4, 2017, meeting reviewed the Insurance Division's findings and the rules and approved the emergency adoption.

The Insurance Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the situation described above proves (as required by section 17A.5(2)"b"(2)) that, because of imminent peril to the public health, safety, or welfare (as required by section 17A.5(2)"b"(1)(c)), the normal effective date of the rules, 35 days after publication, should be waived and these rules should be made effective on August 4, 2017, to allow for the Insurance Division to move forward and implement the Iowa Stopgap Measure in order to allow interested insurance carriers sufficient time to set up and prepare the Iowa Stopgap Measure and allow consumers to purchase the standard plan during the open enrollment period to have coverage starting January 1, 2018.

As the Iowa Stopgap Measure, upon approval by CMS, would utilize federal funding that would be allocated to Iowa consumers via the premium tax credit mechanism of the ACA, no state moneys will be used for the premium credits or reinsurance program. If the Iowa Stopgap Measure is not approved by CMS, the Iowa Stopgap Measure will not be implemented. The Insurance Division, and several other state agencies, may use existing state resources for implementation of the Iowa Stopgap Measure should it be approved.

The Insurance Division adopted these rules on August 4, 2017.

After analysis and review of this rule making, no impact to jobs has been found.

These rules do not include a provision for the waiver of the rules because the Insurance Division's general waiver provisions in 191—Chapter 4 apply.

These rules are intended primarily to allow for implementation of the Iowa Stopgap Measure that has been developed by the Insurance Division upon request by the Governor. The Insurance Commissioner has filed these rules under his rule-making authority of Iowa Code chapters 505, 513C, and 514E.

These rules became effective on August 4, 2017. If CMS does not approve the Iowa Stopgap Measure, it will not be funded and there will be no coverage available under these rules.

These rules are intended to implement Iowa Code chapters 505, 513C, and 514E.

The following amendment is adopted.

Adopt the following **new** 191—Chapter 82:

CHAPTER 82 IOWA STOPGAP MEASURE

191—82.1(505,513C,514E) Purpose. This chapter is intended to establish a temporary health program providing for a single, standard individual health insurance plan available to eligible residents, premium credits based on age and income, and a reinsurance program to support the costs of high-cost claimants. The operations of this Iowa Stopgap Measure shall be facilitated by the Iowa Individual Health Benefit Reinsurance Association (IIHBRA) and the Iowa Comprehensive Health Association (HIPIOWA)

pursuant to the powers and authority afforded to the associations and the insurance commissioner under Iowa Code sections 513C.10 and 514E.2.

191—82.2(505,513C,514E) Authority to request waiver. The insurance commissioner may, on behalf of the state of Iowa, apply to the United States Secretary of Health and Human Services and the United States Secretary of the Treasury under 42 U.S.C. Section 18052 for the waiver of applicable provisions of P.L. 111-148 (Patient Protection and Affordable Care Act) with respect to health insurance coverage for a plan year beginning on or after January 1, 2018. The insurance commissioner may implement a state plan meeting the waiver requirements in a manner consistent with state and federal law and as approved by the United States Secretary of Health and Human Services and the United States Secretary of the Treasury.

191—82.3(505,513C,514E) Funding. The Iowa Stopgap Measure shall be funded by the Centers for Medicare and Medicaid Services (CMS). If no funding or an insufficient amount of funding is received from CMS, the Iowa Stopgap Measure shall not be established. If funding for the Iowa Stopgap Measure is insufficient to completely fund all premium credits and the reinsurance program, a carrier participating in the Iowa Stopgap Measure may cancel and nonrenew a standard individual health insurance plan issued thereunder by giving 30 days' written notice of cancellation to the consumer.

191—82.4(505,513C,514E) Authority. These rules are adopted pursuant to the general rule-making authority of the insurance commissioner in Iowa Code chapters 505, 513C, and 514E to establish the Iowa Stopgap Measure.

191—82.5(505,513C,514E) Scope. This chapter and the definitions and rules set forth herein shall apply only to the Iowa Stopgap Measure.

191—82.6(505,513C,514E) Duties of IHBRA and HIPIOWA to amend their plans of operation.

82.6(1) Pursuant to Iowa Code sections 513C.10 and 514E.2(3), the IHBRA and the HIPIOWA shall develop amendments to their plans of operation that:

- a.* Establish a procedure for implementation of the Iowa Stopgap Measure as set forth in the State of Iowa's Section 1332 waiver;
- b.* Set forth the benefits, the deductible, and the cost-sharing amounts to be offered in the standard individual health insurance plan; and
- c.* Undertake, directly or through contracts with other persons, the procedure for implementation of the Iowa Stopgap Measure.

82.6(2) The amendments to the plans of operation are subject to review and approval by the insurance commissioner.

These rules are intended to implement Iowa Code chapters 505, 513C, and 514E.

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