

INSURANCE DIVISION[191]**Adopted and Filed Emergency**

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

The new rules in these amendments augment the rules adopted as Chapter 82 on August 4, 2017. Chapter 82 primarily allowed for implementation of the Iowa Stopgap Measure that has been developed by the Insurance Division upon request by the Governor. The Iowa Stopgap Measure is intended 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 worked with CMS to develop the waiver application, and submitted the application on August 21, 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 they will 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 will not offer individual ACA-compliant plans in 2018. On April 6, 2017, Aetna, Inc. notified the Insurance Division that it will 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 worked diligently with CMS to develop and finalize the waiver application, which was submitted August 21, 2017 (the full application is available here: <https://iid.iowa.gov/iowa-stopgap-measure>). 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 individual health insurance marketplace.

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 marketplace. 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 individual health insurance marketplace.

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 16, 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 four public hearings on the Iowa Stopgap Measure: Council Bluffs on July 19, 2017; Des Moines on August 2 and 14, 2017; and 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. The Administrative Rules Review Committee met on September 14, 2017, reviewed the Insurance Division's findings and the rules, and unanimously 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 amendments should be made effective on September 14, 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 funds 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 adopted these rules on September 14, 2017.

These amendments are also published herein under Notice of Intended Action as ARC _____C to allow for public comment.

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 rule because the Insurance Division’s general waiver rules of 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 become effective on September 14, 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.

The following amendments are adopted.

Adopt new rules **191—82.7(505,513C,514E)** through **191—82.13(505,513C,514E)**, as follows:

191—82.7(505,513C,514E) Definitions.

As used in this chapter, unless the context otherwise requires,

“*Benefit year*” means a period of time in which health benefits are to be provided, beginning on or after January 1 and ending December 31.

“*Eligible consumer*” means a consumer who meets the following criteria:

- a. Is a resident of Iowa;
- b. Is a citizen or national of the United States, or is considered an alien lawfully present;
- c. Is not enrolled in Medicaid, CHIP, or Medicare;
- d. Does not receive minimum essential coverage; and
- e. Is not incarcerated.

“*Eligible health carrier*” means any health insurer who the commissioner approves to offer the Iowa Stopgap Measure.

“*Household Income*” means an amount equal to the sum of:

- a. The 2017 modified adjusted gross income of the individual; and
- b. The 2017 modified adjusted gross income of all individuals, including a spouse and dependents, who are on the same federal income tax filing, regardless of whether or not these individuals reside in the same household and whether or not coverage is being purchased

for each of the individuals.

“*Iowa Comprehensive Health Association*” or “*HIPIOWA*” means the association established by Iowa Code section 514E.

“*Iowa Individual Health Benefit Reinsurance Association*” or “*IIHBRA*” means the association established by Iowa Code section 513C.10.

“*Lawfully present*” has the meaning given in 45 C.F.R. Section 155.20.

“*Minimum essential coverage*” has the meaning given in 26 U.S.C.A. Section 5000A(f). “*Minimum essential coverage*” also includes coverage offered by an employer that is affordable as defined in 26 U.S.C. Section 36B(c)(2)(C)(i) and meets the minimum value standards as defined in 26 U.S.C. Section 36B(c)(2)(C)(ii).

“*Standard plan*” means the group of individual health benefits developed and offered to all eligible consumers under the Iowa Stopgap Measure.

191—82.8(505,513C,514E) Eligibility Determination.

82.8(1) Any individual intending to purchase the standard plan offered by the Iowa Stopgap Measure must provide the following information to determine the individual’s eligibility to participate and the amount of the individual’s premium credit:

- a.* The name, address, date of birth, and social security number for each individual in the household and for each dependent for whom coverage is sought;
- b.* The individual’s 2017 household income;
- c.* An attestation that the individual does not receive minimum essential coverage;
- d.* An attestation that the individual is not incarcerated;
- e.* An attestation that the individual is not enrolled in Medicare;
- f.* Consent for information to be provided to any necessary state or federal agencies

and third party entities contracted by state or federal agencies for the purpose of determining whether an individual is an eligible consumer; and

g. An attestation that the information submitted by the individual is true, correct, and complete subject to penalty of perjury. Submission of false information may subject the consumer to felony prosecution under Iowa Code section 507E.

82.8(2) Any person or entity who receives information provided by an individual under this Chapter, or receives information from a state or federal agency related to this information shall use the information only for the purposes of, and to the extent necessary in, ensuring the efficient operation of the Iowa Stopgap Measure, including premium credit verification and enrollment eligibility verification.

82.8(3) In the event individuals are enrolled following submission of a completed attested application and through subsequent data matching are determined to not be eligible for the standard plan, the standard plan for such individuals may be prospectively terminated by the carrier.

191—82.9(505,513C,514E) Covered benefits.

82.9(1) The standard plan shall provide the following benefits:

- a.* All essential health benefits set forth in 45 C.F.R. Section 156.110, and
- b.* Benefits required to be provided pursuant to Iowa Code Section 514C.

82.9(2) The standard plan shall have an actuarial value between 68 percent and 72 percent.

191—82.10(505,513C,514E) Enrollment.

82.10(1) For calendar year 2018, eligible consumers who wish to enroll in the Iowa Stopgap Measure must submit all information required to determine eligibility for open enrollment between November 1, 2017 and December 15, 2017.

82.10(2) November 1 through December 15 shall be the open enrollment period for any future years should the Iowa Stopgap Measure be renewed by the commissioner and CMS.

82.10(3) Individuals who qualify for one of the Special Enrollment Periods defined in rule 82.11 may enroll in the Iowa Stopgap Measure if they meet the requirements described in subrule 82.8.

191—82.11(505,513C,514E) Special Enrollment Periods

82.11(1) An individual may purchase the standard plan outside of the defined open enrollment period via a special enrollment period when they experience one of the following qualifying events:

- a.* Loss of qualifying health coverage as defined in 45 C.F.R. Section 155.420(d)(1) and 45 C.F.R. Section 155.420(d)(6)(iii).
- b.* Change in household size as defined in 45 C.F.R. Section 155.420 (d)(2).
- c.* Become newly eligible for coverage due to gaining status as a citizen, national, or lawfully present individual or being released from incarceration. 45 C.F.R. Section 155.420 (d)(3).
- d.* Change in primary place of living as defined in 45 C.F.R. Section 155.420(d)(7).
- e.* Gaining membership in a federally recognized tribe or status as an Alaskan Native Claims Settlement Act Corporate shareholder as defined in 45 C.F.R. Section 155.420 (d)(8).
- f.* Loss of eligibility for Medicaid or the Children's Health Insurance Program as defined in 45 C.F.R. Section 155.420(d)(11).

g. Experience a plan contract violation as defined in 45 C.F.R. Section 155.420(d)(5).

h. Related to domestic abuse or spousal abandonment as defined in 45 C.F.R. Section 155.420(d)(10).

i. Experience an exceptional circumstances as defined in 45 C.F.R. Section 155.420(d)(9).

82.11(2) To qualify for a special enrollment period, an individual must demonstrate that he or she has not been without minimum essential coverage for more than 60 days in the immediately preceding 12 months.

82.11(3) Individuals qualifying for a special enrollment period defined in paragraphs 82.11(1)(a), 82.11(1)(b), 82.11(1)(c), and 82.11(1)(e) will not be required to meet the qualifications of subrule 82.11(2).

82.11(4) An individual seeking to purchase the standard plan during a special enrollment period will be required to submit documentation to verify eligibility for the Iowa Stopgap Measure.

191—82.12(505,513C,514E) Rate Schedule and Premium Credits

82.12(1) Premium rates charged by the eligible health carrier under the Iowa Stopgap Measure shall vary based on the individual's age, except that such rate shall not vary by more than 3 to 1 for adults as set forth in 45 C.F.R. Section 147.102(a)(1)(iii).

82.12(2) A per-member per-month premium credit shall be allocated to an eligible individual based on a combination of their age and, if applicable, 2017 household income as a percentage of the federal poverty line. The premium credit shall be based on the person's age as of the first date of the benefit year.

82.12(3) The value of the monthly per-member per-month premium credits shall be set forth in the State of Iowa's Section 1332 waiver application.

82.12(4) The premium credit amount for each individual will be reconciled based on the 2017 tax filing.

191—82.13(505,513C,514E) Reinsurance Program

82.13(1) The Iowa Stopgap Measure will coordinate reinsurance reimbursement with the Federal High-Cost Risk Pooling Program (FHCRP), to the extent adequate funding for the FHCRP exists. Subject to the availability of sufficient FHCRP funding, reinsurance shall be available for eligible health carriers for individuals with aggregate claims incurred during the 2018 benefit year at the following amounts:

a. For claims that are greater than \$100,000 and up to \$1,000,000, the Iowa Stopgap Measure program will reimburse 85 percent.

b. For claims that are greater than \$1,000,000 and up to \$3,000,000, the Iowa Stopgap Measure program will reimburse 25 percent.

c. For claims that are greater than \$3,000,000, the Iowa Stopgap Measure program will reimburse 40 percent.

d. For claims greater than \$1,000,000, the FHCRP is expected to reimburse sixty percent. In the event sufficient funding for the FHCRP does not exist to contribute the 60 percent share, any shortfall shall be paid to the carriers from funding for the Iowa Stopgap Measure.

82.13(2) Reinsurance payments will be paid to the eligible health carrier in the time and manner defined by the amendment to the plan of operations developed by HIPIOWA. The amendment to the plan of operations shall also include a description of the data a health care

insurer submitting a reinsurance payment must provide and the manner and time period in which such data should be provided.

82.13(3) The reinsurance program will not supersede any payments made pursuant to the FHCRP as set forth in the HHS Notice of Benefit and Payment Parameters for 2018.

191—82.14(505,513C,514E) Term of Iowa Stopgap Measure. The Iowa Stopgap Measure shall provide coverage to enrollees through December 31, 2018, unless the commissioner and CMS renew the program.

Emergency Rule-Making Document Filed by Agency