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**Division 52**  
**Insurance Policies**

**OAR 836-052-0138 (Amended)**

**Open Enrollment**

(1)(a) An issuer [shall] **may** not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a Medicare supplement policy or certificate that is submitted to the issuer prior to or during the six month period beginning with the first day of the first month in which an individual is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available on a guaranteed issue basis to all applicants who qualify under this section without regard to age.

**(b) If a person under the age of 65 applies for enrollment under Medicare Part B due to disability and is initially denied as ineligible, but upon conclusion of the person's appeals process the person is awarded retroactive eligibility or enrollment, the six month period described in this section begins on the first day of the first month after the person receives written notice of retroactive eligibility or enrollment.**

(2)(a) If an applicant qualifies under section (1) of this rule and submits an application during the time period referenced in section (1) of this rule and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition;

(b) If the applicant qualifies under section (1) of this rule and submits an application during the time period referenced in section (1) of this rule and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The manner of the reduction under this subsection shall be the manner prescribed in 42 USC 300gg(a)(3) as of the effective date of this rule.

(3) Except as provided in section 2 of this rule and OAR 836-052-0142 and 836-052-0190, section (1) of this rule shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

(4) This section applies to a person who qualifies for Medicare by reason of disability and who obtains a Medicare supplement policy during the six month period described in section (1) of this rule. For the period that a person to whom this section applies is 65 years of age or less, the premium charged the person by the issuer shall not be greater than the premium charged by the issuer for persons who are 65 years of age. Following that period, for issuers who charge rates on policies on the basis of attained age, the rating plan shall not differentiate on the basis of the reason for eligibility for Medicare Part B.

(5) An issuer must comply with section (1) of this rule with respect to a person:

(a) Who qualifies for Medicare by reason of disability, who first enrolls for benefits under Medicare Part B on or after September 1, 1993, and who applies for a Medicare supplement policy or certificate during the period of eligibility described in section (1) of this rule; or

(b) Who enrolled in Medicare Part B before attaining 65 years of age, who applies for a Medicare supplement policy or certificate upon attaining 65 years of age, during the period of eligibility described in section (1) of this rule that would apply if the person first enrolled in Medicare Part B upon attaining 65 years of age.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

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, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru

1 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 10-2005, f. & cert. ef. 7-  
2 26-05

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4 **OAR 836-052-0143 (New)**

5 **Birthday Rule**

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7 **(1) For the purposes of this rule, for 1990 and 2010 Medicare Supplement Plans, “same or lesser**  
8 **benefits” means a policy or certificate of the same or lower benefit level as indicated on a chart**  
9 **available on the website of the Insurance Division of the Department of Consumer and Business**  
10 **Services.**

11 **(2) Beginning on a person’s birthday and for thirty days after the person’s birthday, a person**  
12 **enrolled in a Medicare supplement policy may cancel the person’s existing Medicare supplement**  
13 **policy or certificate and purchase or select another Medicare supplement policy or certificate with**  
14 **the same or lesser benefits to replace the existing Medicare supplement policy or certificate. An**  
15 **issuer may not deny or condition the issuance or effectiveness, nor discriminate in the pricing of the**  
16 **replacement policy or certificate on the basis of health status, claims experience, receipt of health**  
17 **care or medical condition of the applicant.**

18 **(3) OAR 836-052-0143 does not apply to Medicare supplement policies or certificates issued or**  
19 **delivered before January 1, 1990.**

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21 **Stat. Auth.: ORS 731.244, 743.010, 743.680 to 743.689**

22 **Stats. Implemented: ORS 743.010, 743.683 and 743.684**

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