



Eric Milstead  
Director

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Senators PATRICK, Guthrie, Ward-Engelking and,  
Representatives BARBIERI, Clow, Smith

**FROM:** Elizabeth Bowen - Principal Legislative Research Analyst

**DATE:** October 05, 2018

**SUBJECT:** Temporary Rule

IDAPA 18.01.54 - Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards  
Model Act - Adoption of Temporary Rule - Docket No. 18-0154-1802

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Elizabeth Bowen at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### 18.01.54 – RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

DOCKET NO. 18-0154-1802

#### NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2018. The temporary rule will expire January 1, 2019.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 41-211 and 41-4409, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Two years ago the rule was changed to allow a Medicare beneficiary who was under the age of 65 to buy a Medicare supplement policy within 6 months of qualifying for coverage effective January 1, 2018. As part of that rule change a six-month open enrollment period was included for those consumers who had previously been unable to buy a Medicare supplement policy. We did our best to inform the agent community, the carriers and the providers of this rule change. The six-month open enrollment began January 1st and ended June 30th, 2018. Recognizing that some Idahoans in this category were not aware of the change in Rule 54 that would benefit them by providing access to a Medicare Supplement policy, the Department would like to extend the open enrollment period.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Some Medicare beneficiaries under the age of 65 were unaware of the open enrollment period allowed from January 1 to June 30, 2018, during which they were eligible to purchase a Medicare supplement policy. This is largely because they had not been previously eligible to purchase a Medicare supplement policy until the rule changed effective in 2017. Secondly, because the previous open enrollment did not align with the part D prescription open enrollment, consumers were forced to choose between their existing plan and a Medicare supplement without prescription coverage. This temporary rule will provide an additional three-month period that more closely aligns with the ability to purchase a standalone Medicare part D plan, allowing Medicare beneficiaries under the age of 65 to be eligible to purchase a Medicare supplement policy.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Elaine Mellon (208) 334-4340 or Weston Trexler (208) 334-4315.

Dated this 28th day of September, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 18-0154-1802  
(Only Those Sections With Amendments Are Shown.)**

**026. OPEN ENROLLMENT.**

**01. Offer of Coverage.** (3-29-17)

**a.** An issuer shall 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 policy or certificate that is submitted prior to or during the six (6) month period beginning with:  
(3-29-17)

**i.** The first day of the first month in which an individual is both sixty-five (65) years of age or older and is enrolled for benefits under Medicare Part B. (3-29-17)

**ii.** January 1, 2018 or the first day of the first month of Medicare Part B eligibility due to disability or end stage renal disease, whichever is later, for an individual that is both under sixty-five (65) years of age and enrolled for benefits under Medicare Part B; or (3-29-17)

**iii.** The first day of the first month after the individual receives written notice of retroactive enrollment under Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration. (3-29-17)

**b.** Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under Paragraph 026.01.a. without regard to age. (3-29-17)

**c.** In addition, for an individual that is eligible for Medicare Part B who is both under sixty-five (65) years of age and enrolled for benefits under Medicare Part B, an issuer shall 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 medication of an applicant in the case of an application for a policy or certificate that is submitted between October 1, 2018, and December 31, 2018, for effective dates between October 1, 2018 through February 1, 2019. (10-1-18)T

**02. Treatment of Preexisting Conditions.** (3-29-17)

**a.** If an applicant qualifies under Subsection 026.01 and submits an application during the time period referenced in Subsection 026.01 and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition. (3-29-10)

**b.** If the applicant qualifies under Subsection 026.01 and submits an application during the time period referenced in Subsection 026.01 and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) 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 Secretary of Health and Human Services shall specify the manner of the reduction under this Subsection. (3-29-10)

**c.** Except as provided in Paragraphs 026.02.a. and 02.b., and Sections 027 and 038, nothing in this rule shall be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective. (3-29-17)

**03. Discrimination in Pricing.** An issuer shall not discriminate in the pricing of a Medicare supplement policy or certificate issued pursuant to Subsection 026.01, except on the basis of the following criteria:  
(3-29-17)

**a.** Issue age; and (3-29-17)

**b.** Smoking or tobacco use. (3-29-17)