

OFFER OF MEDIGAP PLAN TYPES H, I, AND J AFTER JANUARY 1, 2006

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GENERAL RULE

Defines "Medigap Rx Policy" to mean: plan types H, I, J (including high deductible J); or any Medigap policy with drug benefits to which "standardization" rules do not apply (includes prestandardized plans with drug benefits); and plans with drug benefits in "waivered" states. SSA section 1882(v)(6)(A).

Provides that no "Medigap Rx Policy" may be sold, issued, or renewed on or after January 1, 2006, to a Part D enrollee. SSA section 1882(v)(1)(A)(i). No "Medigap Rx Policy" may be sold, issued, or renewed on or after January 1, 2006, to a person who is *not* a Part D enrollee except as provided below ("Exception"). SSA section 1882(v)(1)(A)(ii).

EXCEPTION

Policies Issued Before January 1, 2006. Permits renewal of a "Medigap Rx Policy" where a person *does not* enroll in Part D, and the policy was issued *before* January 1, 2006. SSA section 1882(v)(1)(B).

CONSTRUCTION

Offers Made After January 1, 2006. Plan types H, I, and J (including high deductible J) may be offered if the benefit packages are *modified* (eliminate drug benefit). SSA section 1882(v)(1)(C). This interpretive rule applies to an offer made to either: a Part D enrollee [(A)(i)]; or (2) a person not enrolled in Part D [(A)(ii)]. This is because subparagraph (1)(C) is an interpretive rule that applies to the *entire* subsection (v) including the prior rules of (1)(A)(i) and (ii) and (1)(B).

MODIFICATION

Timing of Required Modification. Prescription coverage for expenses of prescription drugs in a "Medigap Rx Policy" must be eliminated "after the effective date" of Part D plan coverage. The "timing" of the modification required in the rule of construction must be made when a person enrolls in Part D. SSA section 1882(v)(2)(C)(i).

Therefore, the rule of construction permits the offer of plan types H, I, and J (including high deductible J) to both Part D enrollees and persons not enrolled in Part D so long as the drug benefits are eliminated on the effective date of the person's coverage under Part D. The conference report states that: H, I, and J policies, modified to exclude drugs, could continue to be offered to "new enrollees" (meaning Part D enrollees). See H.R. Rept. 108-391 at 513.

This explanatory language appears to support the view that new sales of plan types H, I, and J may be made on or after January 1, 2006, so long as they are "modified" *effective on the date of Part D coverage*. In the case of non-Part D enrollees, this appears to permit offers of H, I, and J as currently structured so long as the plan is *later modified* on the date the policyholder becomes a Part D enrollee.