

- On December 2, 1994, a public hearing was conducted during an NAIC meeting in New Orleans, Louisiana. Sixteen representatives of organizations provided testimony at this hearing. On December 3 and 5, 1994, additional public meetings were held to begin drafting the statements.

- On December 13, 1994, draft disclosure statements were mailed to the same persons who received the Request for Comment. This mailing asked for comment on the draft statements and announced another public meeting. This mailing generated an additional 16 comment letters.

- On January 9 and 10, 1995, public meetings were held in Washington, D.C., to solicit further input from consumer and insurance industry representatives.

- On January 12, 1995, copies of the revised disclosure statements were faxed to the participants of the January 9 and 10 meetings requesting additional input and announcing the final public meeting. An additional 5 comment letters were received.

- On January 20, 1995, a final public meeting was held in Washington, D.C., seeking additional public comment on the statements before submitting them for adoption by the Commissioners in a plenary session held on January 21.

The NAIC delivered the statements to the Secretary on January 27, 1995. The Secretary approved them on February 24, 1995.

B. Availability of Comments Received During Development of NAIC Disclosure Statements

Comments concerning the 10 disclosure statements received during the development and approval process will be available for public inspection beginning with the date of the publication of this document. They may be viewed in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890), and in Room 132 East High Rise building, 6325 Security Boulevard, Baltimore Maryland, on Monday through Friday, of each week from 8:30 a.m. to 4:00 p.m. (phone: (410) 966-5633).

C. Criminal and Civil Money Penalties

Any issuer who is required to provide the appropriate statement as part of, or together with, the application after the effective date of this notice and fails to do so, or fails to pay benefits under the policy without regard to other coverage, is subject to the imposition of the Federal criminal and/or civil penalties

that are identified in section 1882(d)(3)(A) of the Act. The criminal penalties identified in this section are fines under title 18 of the U.S. Code, which could be as much as \$25,000, or imprisonment of not more than 5 years, or both. In addition to or in lieu of criminal penalties, an issuer who violates these requirements could be subject to a civil money penalty of up to \$25,000 per violation. In the case of violation of these requirements by any person other than the issuer (e.g., an agent), the civil money penalty per violation may not exceed \$15,000.

D. Policies Not Requiring Disclosure Statements

Certain policies do not have to carry a disclosure statement.

- Policies that do not duplicate Medicare benefits, even incidentally.

(An argument has been made that a policy that coordinates benefits with Medicare (that is, does not pay otherwise covered benefits if Medicare has already paid benefits) does not "duplicate" Medicare within the meaning of section 1882(d)(3) of the Act. However, this interpretation would make section 1882(d)(3)(C)(ii) of the Act meaningless. The latter provision permits duplication of Medicare only if a policy makes benefits fully payable without regard to other health benefit coverage. Therefore, section 1882(d)(3)(C)(ii) of the Act only makes sense if the policy in question has a coordination of benefits clause. In other words, the controlling factor is whether the policy provides coverage of benefits that would duplicate Medicare benefits, not whether or not it actually pays.

A question was also raised as to whether policies that pay fixed dollar amounts that are not for specific services duplicate Medicare. Section 1882(d)(3)(D)(i)(I) of the Act specifically requires the NAIC to draft statements for policies that pay "fixed, cash benefits." This represents a congressional determination that these policies "duplicate" Medicare.)

- Life insurance policies that contain long term care riders or accelerated death benefits.

(These types of policies are not covered under the disclosure requirements for two reasons. First, they are advertised, marketed, and sold as life products, not as "health insurance." Second, as life insurance policies, these products will always pay the same amount of benefit whether the payment is made before or after death. By contrast, if a long term care insurance policyholder dies without ever filing a claim for long term care benefits, there

is usually no return on his or her "investment" in premiums.)

- Disability insurance policies. (Although in some contexts these types of policies may be considered to be a form of health insurance, we believe that they are not the type of insurance policies Congress intended to come within the scope of this legislation. They have traditionally been considered to be a separate type of insurance, and the Internal Revenue Code treats them differently from health insurance.)

- Property and casualty policies, including personal liability and automobile insurance.

(These types of policies may pay certain health benefits, but State laws do not consider property and casualty coverage to be "health insurance.")

- Employer and union group health plans.

(These types of policies are exempt from the anti-duplication prohibition under section 1882(d)(3)(C)(i) of the Act and therefore do not have to meet the requirements of section 1882(d)(3)(C)(ii) of the Act. Such plans do not need to carry disclosure statements even though they may fit one of the above categories.)

- Managed care organizations with Medicare contracts under section 1876 of the Social Security Act.

(These plans do not "duplicate" Medicare benefits; rather their purpose is to actually provide all covered Medicare benefits directly to enrolled beneficiaries.)

- HCPPs that provide some or all Part B benefits under an agreement with HCFA under section 1833(a) of the Act. (As with section 1876 managed care plans, under these agreements, HCPPs provide the actual Medicare benefits; they do not duplicate Medicare.)

E. Policies Requiring Disclosure Statements

The NAIC has identified 10 separate types of health insurance policies that each need an individualized statement of the extent to which the policy duplicates Medicare. These types of policies are—

- (1) policies that provide benefits for expenses incurred for an accidental injury only;

- (2) policies that provide benefits for specified limited services;

- (3) policies that reimburse expenses incurred for specified disease or other specified impairments (including cancer policies, specified disease policies and other policies that limit reimbursement to named medical conditions);

- (4) policies that pay fixed dollar amounts for specified disease or other