**20:06:13:80.  Guaranteed issue -- Eligible persons.** An eligible person is one who seeks to enroll under the policy during the period specified in § 20:06:13:80.01 and who submits evidence of the date of termination, disenrollment, or Medicare part D enrollment with the application for a Medicare supplement policy, and who is described in any of the following paragraphs:

 (1)  The person is enrolled under an employee welfare benefit plan or an employer-based health insurance plan that provides health benefits, and coverage under the plan terminates for that person;

 (2)  The person is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under § 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the person's enrollment with such provider if the person were enrolled in a Medicare Advantage plan, or the person is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply:

 (a)   The certification of the organization or plan under this part has been terminated;

 (b)   The organization has terminated or otherwise discontinued providing the plan in the area in which the person resides;

 (c)   The person is no longer eligible to elect the plan because of a change in the person's place of residence or other change in circumstances specified by the secretary, but not including termination of the person's enrollment on the basis described in § 1851(g)(3)(B) of the federal Social Security Act, if the person has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under § 1856, or the plan is terminated for all individuals within a residence area;

 (d)   The person demonstrates, in accordance with guidelines established by the secretary, that:

 (i)   The organization offering the plan substantially violated a material provision of the organization's contract under part C of Medicare in relation to the person, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards; or

 (ii)  The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the person; or

 (e)   The person meets any other exceptional conditions as the secretary may provide;

 (3)(a)  The person is enrolled with:

 (i)   An eligible organization under a contract under § 1876 of the Social Security Act, Medicare cost;

 (ii)  A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

 (iii)  An organization under an agreement under § 1833(a)(1)(A) of the Social Security Act, health care prepayment plan; or

 (iv)  An organization under a Medicare select policy; and

 (b)  The enrollment ceases under the same circumstances that would permit discontinuance of a person's election of coverage under subdivision 2;

 (4)(a)  The person is enrolled under a Medicare supplement policy and the enrollment ceases because:

 (i)   Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

 (ii)  Of other involuntary termination of coverage or enrollment under the policy;

 (b)  The issuer of the policy substantially violated a material provision of the policy; or

 (c)  The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the person;

 (5)(a)  The person was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under § 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under § 1894 of the Social Security Act or a Medicare Select policy;

 (b)  The subsequent enrollment under subparagraph (a) is terminated by the enrollee during any period within the first 12 months of the subsequent enrollment, during which the enrollee is permitted to terminate the subsequent enrollment under § 1851(e) of the federal Social Security Act;

 (6)  The person, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in a Medicare Advantage plan under part C of Medicare, or with a PACE provider under § 1894 of the Social Security Act, and disenrolls from the plan by not later than 12 months after the effective date of enrollment; or

 (7)  The person enrolls in a Medicare part D plan during the initial enrollment period and, at the time of enrollment in part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare part D along with the application for a policy described in subdivision 20:06:13:81(4).

 **Source:** 25 SDR 44, effective September 30, 1998; 25 SDR 90, effective January 3, 1999; 27 SDR 53, effective December 4, 2000; 28 SDR 157, effective May 19, 2002; 31 SDR 214, effective July 6, 2005.

 **General Authority:** SDCL 58-17A-2(2)(9)(16).

 **Law Implemented:** SDCL 58-17A-2(2)(9)(16).