

Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

Title 31

MARYLAND INSURANCE ADMINISTRATION

Subtitle 01 GENERAL PROVISIONS

31.01.02 Emergency Powers

Authority: Health-General Article, §19-706; Insurance Article, §2-115; Annotated Code of Maryland

Notice of Proposed Action

[20-153-P]

The Insurance Commissioner proposes to amend Regulations .02, .03, and .06 under COMAR 31.01.02 Emergency Powers.

Statement of Purpose

The purpose of this action is to amend Regulations .02, .03, and .06 under COMAR 31.01.02 Emergency Powers. Specifically, this regulation will establish additional emergency powers of the Commissioner related to health insurance coverage requirements for a specified illness for which a state of emergency is declared. Additionally, changes are being made to Regulations .02 and .06 regarding Medicare supplement plans. The purpose of the requested amendments is to ensure that Medicaid enrollees do not inadvertently lose their right to a guaranteed issue period for enrollment in a Medicare Supplement policy without medical underwriting. Under current Maryland law (Insurance Article, §15-909, Annotated Code of Maryland), there is a 6-month period following the date an individual first enrolls in Medicare (the guaranteed issue period) during which an individual may apply for a Medicare supplement policy and be guaranteed acceptance by the carrier, regardless of health status. After the guaranteed issue period, an individual may still apply for a Medicare supplement policy, but they are subject to medical underwriting and may be denied coverage by the carrier. Due to certain federal and State requirements, a Medicare supplement carrier generally may not issue a Medicare supplement policy to a Medicaid enrollee. Prior to the pandemic, when a Medicaid enrollee

enrolled in Medicare Part B, the Medicaid coverage automatically terminated, and the individual could enroll in a Medicare supplement policy during the guaranteed issue period. For the duration of the national Public Health Emergency for COVID-19, however, the federal government is prohibiting states from terminating Medicaid coverage based on an individual's enrollment in Medicare. If Medicaid terminations resume after the national public health emergency exists for longer than 6 months, individuals terminated from Medicaid may no longer be eligible for the guaranteed issue period for enrollment in a Medicare supplement period. If such an individual is not able to pass medical underwriting, they will be unable to purchase a Medicare supplement policy through no fault of their own.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. In the event a state of emergency is declared due to a disease outbreak, epidemic, or pandemic, the requirements in the proposed regulation will increase access to care under private insurance plans for the specified illness for which the state of emergency is declared. The proposed regulation will remove coverage barriers and decrease cost-sharing for services related to the specified illness. These requirements will have a positive fiscal impact on consumers and a negative fiscal impact on insurance carriers.

| II. Types of Economic Impact. | Revenue (R+/R-) Expenditure (E+/E-) | Magnitude |
|-------------------------------|--|-----------|
| A. On issuing agency: | NONE | |
| B. On other State agencies: | NONE | |
| C. On local governments: | NONE | |

| | Benefit Cost (-) | (+) Magnitude |
|---|---------------------|------------------|
| D. On regulated industries or trade groups: | NONE | |
| Cost | (-) | Unknown |
| E. On other industries or trade groups: | NONE | |
| F. Direct and indirect effects on public: | NONE | |
| Benefit | (+) | Unknown |

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. Assuming a state of emergency is declared due to a disease outbreak, epidemic, or pandemic, insurance carriers may be required to cover additional services and decrease cost-sharing.

F. Assuming a state of emergency is declared due to a disease outbreak, epidemic, or pandemic, the cost-sharing for preventive, testing, diagnostic, lab services, and treatment may be waived.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Lisa Larson, Regulations Manager, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700 Baltimore, MD 21202, or call 410-468-2007, or email to insurancereview.mia@maryland.gov, or fax to 410-468-2020. Comments will be accepted through October 26, 2020. A public hearing has not been scheduled.

.02 Applicability.

A. This chapter applies to:

(1) Each insurer, nonprofit health service plan, health maintenance organization, and dental plan organization licensed to do business in Maryland; [and]

(2) Each premium finance company registered to do business in Maryland[.]; and

(3) Each pharmacy benefits manager registered to do business in Maryland.

B. (text unchanged)

.03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (10) (text unchanged)

(11) “Copayment” means a specified charge that a covered person pays each time services of a particular type or in a designated setting are received.

(12) “Deductible” means the amount of allowable charges that are incurred by an individual or family per year before a carrier begins payment.

(13) “Eligible individual” means an individual who:

(a) Enrolled in Medicare Part B while enrolled in the Maryland Medical Assistance Program;

(b) Remained in the Maryland Medical Assistance Program due to a suspension of terminations by the Maryland Medical Assistance Program during a state of emergency, and was not disenrolled until or terminated until at least 6 months following the effective date of enrollment in Part B of Medicare;

(c) Seeks to enroll in a Medicare supplement policy during the 63-day period following the later of notice of termination or disenrollment or the date of termination from the Maryland Medical Assistance Program; and

(d) Submits evidence of the date of termination or disenrollment from the Maryland Medical Assistance Program with the application for a Medicare supplement policy.

[(11)] (14) — [(22)] (25) (text unchanged)

(26) “Specified illness” means an illness, disease, virus, or infection for which:

(a) The Governor has declared or has renewed a declaration of a state of emergency for the State or an area within the State under Public Safety Article, §14-107, Annotated Code of Maryland; or

(b) The President of the United States has issued a major disaster or emergency declaration for the State or an area within the State under the federal Stafford Act.

[(23)] (27) (text unchanged)

.06 Life and Health.

A. The bulletin issued by the Commissioner under Regulation .05 of this chapter may require health carriers to:

(1) — (4) (text unchanged)

(5) Except as provided in §§J and K of this regulation, waive any cost-sharing, including copayments, coinsurance, and deductibles, for any visit to diagnose or test for a specified illness, regardless of the setting of the testing (for example, an emergency room, urgent care center, or primary physician’s office);

(6) Except as provided in §§J and K of this regulation, waive any cost-sharing, including copayments, coinsurance, and deductibles, for laboratory fees to diagnose or test for a specified illness;

(7) Except as provided in §§J and K of this regulation, waive any cost-sharing, including copayments, coinsurance, and deductibles, for vaccination for a specified illness; and

(8) Except as provided in §§J and K of this regulation, waive any cost-sharing, including copayments, coinsurance, and deductibles, for treatment for a specified illness.

B. — E. (text unchanged)

F. The Commissioner may require a health carrier to make a claims payment for treatment for a specified illness that the health carrier has denied as experimental.

G. A health carrier shall evaluate a request to use an out-of-network provider to perform diagnostic testing of a specified illness solely on the basis of whether the use of the out-of-network provider is medically necessary or appropriate.

H. Subject to §M of this regulation, the only prior authorization requirements a health carrier may utilize relating to testing for a specified illness shall relate to the medical necessity of that testing.

I. An adverse decision on a request for coverage of diagnostic services for a specified illness shall be considered an emergency case for which an expedited grievance procedure is required under Insurance Article, §15-10A-02, Annotated Code of Maryland.

J. The requirements of §A(5)—(8) of this regulation do not apply to a Medicare supplement policy as defined by Insurance Article, §15-901(k), Annotated Code of Maryland.

K. A carrier is not required to waive the deductible for an insured covered under a high deductible health plan, as defined in 26 U.S.C. §223, if the waiver of the deductible would disqualify the plan from being considered a high deductible health plan under federal law.

L. The Commissioner may require pharmacy benefits managers and health carriers to suspend random audits, including but not limited to in-person or “desk” audits, of pharmacies unless there is a reasonable suspicion of fraud.

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M. The Commissioner may require health carriers to suspend, waive, or modify requirements related to prior authorizations, concurrent review, retrospective review, and notification of inpatient acute care, post-discharge care, and facility transfers.

N. With respect to an eligible individual, a carrier may not:

(1) Deny or place a condition on the issuance or effectiveness of a Medicare supplement policy that is offered and is available for issuance to new enrollees by the issuer;

(2) Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; or

(3) Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

KATHLEEN A. BIRrane
Insurance Commissioner