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May 21, 2014

Administrative, Executive and Legislative Review (AELR) Committee
90 State Circle
Annapolis, MD 21401

Governor's Office
Attn: Peggy Watson
State House
Annapolis, MD 21401

Division of State Documents
State House
Annapolis, MD 21401

State Publications Depository and Distribution Program
Attn: Brigid Sye-Jones
Enoch Pratt Free Library
400 Cathedral St.
Baltimore, MD 21201

Department of Legislative Services Library
90 State Circle
Annapolis, MD 21401

RE: Regulatory Review and Evaluation Act Evaluation Report-COMAR 31.11

Dear Sir or Madam:

I am filing the required number of copies of the attached Evaluation Report on behalf of the Maryland Insurance Administration as follows:

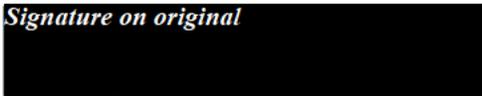
- AELR Committee-one copy
- Governor's Office (Peggy Watson)-one copy
- Division of State Documents-one copy
- State Library Resource Center via State Publications Depository and Distribution Program (Brigid Sye-Jones)-sixteen copies

- Department of Legislative Services Library-five copies

If you have any questions, or require additional information, please contact me at the above-referenced telephone number and email address.

Sincerely,

Signature on original



Catherine Grason
Director of Special Projects, Office of the Commissioner

cc: Therese Goldsmith, Insurance Commissioner
Karen Stakem Hornig, Deputy Commissioner
Katrina Lawhorn, Regulatory & Facilities Supervisor
Brenda Wilson, Associate Commissioner, Life and Health Unit

**Regulatory Review and Evaluation Act
Evaluation Report Form
2012 – 2020**

Chapter Codification:

COMAR 31.11.02

Chapter Name:

Group Health Insurance—Continuation of Coverage of Divorced Spouses

Authority:

Insurance Article, §§2-109, 14-124(b), 15-407-- 15-409, and 15-412; Health-General Article, §19-703; Annotated Code of Maryland

Date Originally Adopted or Last Amended:

September 19, 1988

Purpose:

The purpose of this chapter is to provide standards for implementing requirements of the Insurance Article and the Health-General Article, Annotated Code of Maryland, with respect to providing or continuing coverage for certain divorced spouses and dependent children.

A. Review Criteria. (State Government Article, §10-132(1)(i), Annotated Code of Maryland; COMAR 01.01.2003.20E)

- (1) Do the regulations continue to be necessary for the public interest? Yes No
- (2) Do the regulations continue to be supported by statutory authority and judicial opinion? Yes No
- (3) Are the regulations obsolete or otherwise appropriate for amendment or repeal? Yes No
- (4) Are the regulations effective in accomplishing their intended purpose? Yes No

B. Outreach and Research. (State Government Article, §10-135(a)(2)(i)–(viii), Annotated Code of Maryland)

- (1) List any stakeholders invited to review the regulations and provide a summary of their participation in and input into the review process.

Insurers, producers, and consumers were alerted to the review via notices posted on the following pages of the Maryland Insurance Administration's (MIA) website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Notices included an invitation to comment, along with a contact name and information. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. Two sets of comments were received (CareFirst and United Healthcare).

- (2) List any other affected agencies that were invited to review the regulations and provide a summary of their participation in and input into the review process.

All State agencies were notified through publication in the *Maryland Register* and on the DSD website. Additionally, emails were sent to the principal counsel for each of the following agencies:

Department of Aging
Department of Business and Economic Development
Department of Health and Mental Hygiene
Department of Labor, Licensing and Regulation
Maryland Health Benefit Exchange

No comments were received.

- (3) Describe the process used to solicit public comment, including:
- (a) any notice published in the *Maryland Register*;
 - (b) any notice published in newspapers of general circulation;
 - (c) any notice posted on the unit's website or on a Statewide website created for units to post notices of regulation review;
 - (d) any mailing by the adopting authority; and
 - (e) any public hearing held.

Notice was published in the *Maryland Register*, on the DSD website, and on the following pages of the MIA website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. No comments, other than the stakeholder comments described in B(1) of this report, were received.

- (4) Provide summaries of:
- (a) all comments received from stakeholders, affected units, or the public; and
 - (b) the adopting authority's responses to those comments.

COMMENT: CareFirst suggested that this chapter be repealed in its entirety, stating that it is no longer needed in light of federal healthcare reform.

RESPONSE: The MIA disagrees that this chapter is no longer needed, as the law requiring continuation of benefits after divorce, §15-408 of the Insurance Article, is still in effect. Therefore, no amendments will be proposed in response to this comment.

Comments and Responses Continue on the Next Page

COMMENT: United Healthcare suggested that, “in the interest of consistency, it would be better to replace COMAR 31.11.02.10 (termination statement) with a state law that tracks the federal COBRA provision. Employers that have more than 19 employees would observe the federal COBRA provision, applicable to employers with at least 20 employees.” United Healthcare also noted that many other states have already adopted this change.

RESPONSE: The Maryland law requiring continuation of benefits after divorce is substantially different from the federal COBRA law. A change to state law cannot be made through regulation; rather, this change would require an act of the legislature. Therefore, no amendments to this regulation will be proposed in response to this comment.

COMMENT: United Healthcare suggested that under the allowable termination provisions, the MIA should expressly delineate “*remarriage*” as one of the reasons for terminations, noting that many states have already adopted this suggested change.

RESPONSE: This change is not needed, as this cause for termination already appears in COMAR 31.11.02.07B(4). Therefore, no amendments will be proposed in response to this comment.

- (5) Describe any interunit conflict reviewed and the resolution or proposed resolution of that conflict.

N/A.

- (6) Provide a summary of any relevant scientific data gathered.

N/A.

- (7) Provide a summary of any relevant information gathered related to the regulations of other states or the federal government.

Neither a National Association of Insurance Commissioners (NAIC) model regulation, nor the regulations of other states are pertinent to this review, as these regulations are needed to implement a unique Maryland law, §15-408 of the Insurance Article.

- (8) Provide a summary of any other relevant information gathered.

N/A.

C. Under COMAR 01.01.2003.20E(3), does the agency have any existing policy statements, guidelines, or standards being applied or enforced which should be promulgated as regulations, in accordance with the Administrative Procedure Act? Yes No

Has the agency promulgated all regulations required by recent legislation? Yes No

Provide explanations of the above responses, as needed:

N/A. There are no existing policy statements, guidelines, or standards pertaining to continuation of coverage of divorced spouses for group health insurance being applied or enforced which should be promulgated as regulations in accordance with the Administrative Procedure Act. Likewise, there is no recent legislation pertaining to continuation of coverage of divorced spouses for group health insurance requiring promulgation of regulations or amendments to COMAR 31.11.02.

D. Actions Needed. (State Government Article, §10-135(a)(2)(ix) – (xi), Annotated Code of Maryland)
(check all that apply)

no action

amendment

repeal

repeal and adopt new regulations

reorganization

Summary:

This chapter continues to be necessary for the public interest, and continues to be supported by statutory authority and judicial opinions. These regulations are needed to implement the requirements of § 15-408 of the Insurance Article.

The MIA will be proposing the following technical amendments to this regulation:

- The MIA will propose that regulation .08 be repealed, since the conversion requirement found in §15-412 of the Insurance Article has been repealed by House Bill 360, Chapter 106, Acts of 2013, effective January 1, 2014; and
- The MIA will propose that the reference to §§15-407--15-409 of the Insurance Article as enabling authority be amended to refer only to §15-408, the specific statute that this chapter implements. Additionally, the MIA will propose that §15-412 of the Insurance Article be stricken from the authority section, as this statute has been repealed.

Person performing review:

Catherine Grason

Title:

Director of Special
Projects, Office of the
Commissioner

**Regulatory Review and Evaluation Act
Evaluation Report Form
2012 – 2020**

Chapter Codification:

Chapter Name:

Authority:

Date Originally Adopted or Last Amended:

Purpose:

A. Review Criteria. (State Government Article, §10-132(1)(i), Annotated Code of Maryland; COMAR 01.01.2003.20E)

- (1) Do the regulations continue to be necessary for the public interest? Yes No
- (2) Do the regulations continue to be supported by statutory authority and judicial opinion? Yes No
- (3) Are the regulations obsolete or otherwise appropriate for amendment or repeal? Yes No
- (4) Are the regulations effective in accomplishing their intended purpose? Yes No

B. Outreach and Research. (State Government Article, §10-135(a)(2)(i)–(viii), Annotated Code of Maryland)

- (1) List any stakeholders invited to review the regulations and provide a summary of their participation in and input into the review process.

Insurers, producers, and consumers were alerted to the review via notices posted on the following pages of the Maryland Insurance Administration’s (MIA) website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Notices included an invitation to comment, along with a contact name and information. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. One comment was received on this chapter (CareFirst).

- (2) List any other affected agencies that were invited to review the regulations and provide a summary of their participation in and input into the review process.

All State agencies were notified through publication in the *Maryland Register* and on the DSD website. Additionally, emails were sent to the principal counsel for each of the following agencies:

Department of Aging
Department of Business and Economic Development
Department of Health and Mental Hygiene
Department of Labor, Licensing and Regulation
Maryland Health Benefit Exchange

No comments were received.

- (3) Describe the process used to solicit public comment, including:
- (a) any notice published in the *Maryland Register*;
 - (b) any notice published in newspapers of general circulation;
 - (c) any notice posted on the unit's website or on a Statewide website created for units to post notices of regulation review;
 - (d) any mailing by the adopting authority; and
 - (e) any public hearing held.

Notice was published in the *Maryland Register*, on the DSD website, and on the following pages of the MIA website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. No comments, other than the stakeholder comment described B(1) of this report, were received.

- (4) Provide summaries of:
- (a) all comments received from stakeholders, affected units, or the public; and
 - (b) the adopting authority's responses to those comments.

COMMENT: CareFirst suggested that this chapter be repealed in its entirety, stating that it is no longer needed in light of federal healthcare reform.

RESPONSE: The MIA disagrees that this chapter is no longer needed, as the law requiring continuation of benefits for a surviving spouse, §15-407 of the Insurance Article, is still in effect. Therefore, no amendments will be proposed in response to this comment.

- (5) Describe any interunit conflict reviewed and the resolution or proposed resolution of that conflict.

N/A.

(6) Provide a summary of any relevant scientific data gathered.

N/A.

(7) Provide a summary of any relevant information gathered related to the regulations of other states or the federal government.

Neither a National Association of Insurance Commissioners (NAIC) model regulation, nor the regulations of other states are pertinent to this review, as these regulations are needed to implement a unique Maryland law, §15-407 of the Insurance Article.

(8) Provide a summary of any other relevant information gathered.

N/A.

C. Under COMAR 01.01.2003.20E(3), does the agency have any existing policy statements, guidelines, or standards being applied or enforced which should be promulgated as regulations, in accordance with the Administrative Procedure Act? Yes No

Has the agency promulgated all regulations required by recent legislation? Yes No

Provide explanations of the above responses, as needed:

N/A. There are no existing policy statements, guidelines, or standards pertaining to continuation of coverage of surviving spouses for group health insurance being applied or enforced which should be promulgated as regulations in accordance with the Administrative Procedure Act. Likewise, there is no recent legislation pertaining to continuation of coverage of surviving spouses for group health insurance requiring promulgation of regulations or amendments to COMAR 31.11.03.

D. **Actions Needed.** (State Government Article, §10-135(a)(2)(ix) – (xi), Annotated Code of Maryland) (check all that apply)

- no action
- X amendment
- repeal
- repeal and adopt new regulations
- reorganization

Summary:

This chapter continues to be necessary for the public interest, and continues to be supported by statutory authority and judicial opinions. These regulations are needed to implement the requirements of §15-407 of the Insurance Article.

The MIA will be proposing the following technical amendments to this regulation:

- The MIA will propose that regulation .08 be repealed, since the conversion requirement found in §15-412 of the Insurance Article has been repealed by House Bill 360, Chapter 106, Acts of 2013, effective January 1, 2014; and
- The MIA will propose that the reference to §§15-407--15-409 of the Insurance Article as enabling authority be amended to refer only to §15-407, the specific statute that this chapter implements. Additionally, the MIA will propose that §15-412 of the Insurance Article be stricken from the authority section, as this statute has been repealed.

Person performing review:

Catherine Grason

Title:

Director of Special
Projects, Office of the
Commissioner

**Regulatory Review and Evaluation Act
Evaluation Report Form
2012 – 2020**

Chapter Codification: COMAR 31.11.04

Chapter Name: Group Health Insurance—Continuation of Coverage for Involuntarily Terminated Employees

Authority: Insurance Article, §§2-109, 14-124(b), 15-409; Health-General Article, §19-703; Labor and Employment Article, §§8-805 and 8-806; Annotated Code of Maryland

Date Originally Adopted or Last Amended: September 27, 2004

Purpose: The purpose of this chapter is to provide standards for implementing requirements of the Insurance Article and the Health-General Article, Annotated Code of Maryland, with respect to continuation of coverage for certain terminated employees.

A. Review Criteria. (State Government Article, §10-132(1)(i), Annotated Code of Maryland; COMAR 01.01.2003.20E)

- (1) Do the regulations continue to be necessary for the public interest? Yes No
- (2) Do the regulations continue to be supported by statutory authority and judicial opinion? Yes No
- (3) Are the regulations obsolete or otherwise appropriate for amendment or repeal? Yes No
- (4) Are the regulations effective in accomplishing their intended purpose? Yes No

B. Outreach and Research. (State Government Article, §10-135(a)(2)(i)–(viii), Annotated Code of Maryland)

- (1) List any stakeholders invited to review the regulations and provide a summary of their participation in and input into the review process.

Insurers, producers, and consumers were alerted to the review via notices posted on the following pages of the Maryland Insurance Administration’s (MIA) website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Notices included an invitation to comment, along with a contact name and information. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. Two sets of comments were received (CareFirst and United Healthcare).

- (2) List any other affected agencies that were invited to review the regulations and provide a summary of their participation in and input into the review process.

All State agencies were notified through publication in the *Maryland Register* and on the DSD website. Additionally, emails were sent to the principal counsel for each of the following agencies:

Department of Aging
Department of Business and Economic Development
Department of Health and Mental Hygiene
Department of Labor, Licensing and Regulation
Maryland Health Benefit Exchange

No comments were received.

- (3) Describe the process used to solicit public comment, including:
- (a) any notice published in the *Maryland Register*;
 - (b) any notice published in newspapers of general circulation;
 - (c) any notice posted on the unit's website or on a Statewide website created for units to post notices of regulation review;
 - (d) any mailing by the adopting authority; and
 - (e) any public hearing held.

Notice was published in the *Maryland Register*, on the DSD website, and on the following pages of the MIA website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. No comments, other than the stakeholder comments described in B(1) of this report, were received.

- (4) Provide summaries of:
- (a) all comments received from stakeholders, affected units, or the public; and
 - (b) the adopting authority's responses to those comments.

COMMENT: CareFirst suggested that this chapter be repealed in its entirety, stating that it is no longer needed in light of federal healthcare reform.

RESPONSE: The MIA disagrees that this chapter is no longer needed, as the law requiring continuation of benefits for involuntarily terminated employees, §15-409 of the Insurance Article, is still in effect. Therefore, no amendments will be proposed in response to this comment.

COMMENT: United Healthcare recommended that "in the interest of consistency, COMAR 31.11.04 be replaced with a state regulation/law that mimics the federal COBRA provisions. Small Group Employers that have more than 19 employees would observe the federal COBRA provision, applicable to employers with at least 20 employees." United Healthcare also noted that many other states have already adopted this change.

RESPONSE: The Maryland law requiring continuation of benefits after involuntarily termination is substantially different from the federal COBRA law. A change to state law cannot be made through regulation; rather, this change would require an act of the legislature. Therefore, no amendments to this regulation will be proposed in response to this comment.

Comments and Responses continue on the next page.

COMMENT: United Healthcare suggested that the MIA, “remove specific coverage requirements and instead refer to ‘eligible benefits’ existing prior to termination.”

RESPONSE: This comment set forth in United Healthcare’s letter is unclear. It does not mention any specific reference in the regulations. A review of the entire chapter does not show any inappropriate reference to specific coverage requirements. Therefore, the MIA recommends that no changes be made at this time.

COMMENT: United Healthcare suggested the addition of an ineligibility provision due to “Gross Misconduct.”

RESPONSE: The MIA believes that the addition of an ineligibility provision due to “gross misconduct” would be both redundant and inconsistent with the definition found in the enabling statute, §15-409 of the Insurance Article. These regulations presently require group contracts to include a continuation of benefits provision for an individual who has an “applicable change in status.” The term “applicable change in status” is defined in Regulation .02B(1) in a manner that is consistent with the definition found in §15-409 of the Insurance Article. The “applicable change in status” definition provides an exemption if termination is due to “cause” rather than “gross misconduct.” For this reason, no amendments to this regulation will be proposed in response to this comment.

(5) Describe any interunit conflict reviewed and the resolution or proposed resolution of that conflict.

N/A.

(6) Provide a summary of any relevant scientific data gathered.

N/A.

(7) Provide a summary of any relevant information gathered related to the regulations of other states or the federal government.

Neither a National Association of Insurance Commissioners (NAIC) model regulation, nor the regulations of other states are pertinent to this review, as these regulations are needed to implement a unique Maryland law, §15-409 of the Insurance Article.

(8) Provide a summary of any other relevant information gathered.

N/A.

C. Under COMAR 01.01.2003.20E(3), does the agency have any existing policy statements, guidelines, or standards being applied or enforced which should be promulgated as regulations, in accordance with the Administrative Procedure Act? Yes No

Has the agency promulgated all regulations required by recent legislation? Yes No

Provide explanations of the above responses, as needed:

N/A. There are no existing policy statements, guidelines, or standards pertaining to continuation of coverage for involuntarily terminated employees for group health insurance being applied or enforced which should be promulgated as regulations in accordance with the Administrative Procedure Act. Likewise, there is no recent legislation pertaining to continuation of coverage for involuntarily terminated employees for group health insurance requiring promulgation of regulations or amendments to COMAR 31.11.04.

D. **Actions Needed.** (State Government Article, §10-135(a)(2)(ix) – (xi), Annotated Code of Maryland) (check all that apply)

no action

X amendment

repeal

repeal and adopt new regulations

reorganization

Summary:

This chapter continues to be necessary for the public interest, and continues to be supported by statutory authority and judicial opinions. These regulations are needed to implement the requirements of §15-409 of the Insurance Article.

The MIA will be proposing the following technical amendments to this regulation:

- The MIA will propose that regulation .08 be repealed, since the conversion requirement found in §15-412 of the Insurance Article has been repealed by House Bill 360, Chapter 106, Acts of 2013, effective January 1, 2014; and
- The MIA will propose that the reference to the Labor and Employment Article, §§8-805 and 8-806 as enabling authority be repealed. The authority for these regulations is not derived from these statutes.

Person performing review:

Catherine Grason

Title:

Director of Special
Projects, Office of the
Commissioner

**Regulatory Review and Evaluation Act
Evaluation Report Form
2012 – 2020**

Chapter Codification:

Chapter Name:

Authority:

Date Originally Adopted or Last Amended:

Purpose:

A. Review Criteria. (State Government Article, §10-132(1)(i), Annotated Code of Maryland; COMAR 01.01.2003.20E)

- (1) Do the regulations continue to be necessary for the public interest? Yes No
- (2) Do the regulations continue to be supported by statutory authority and judicial opinion? Yes No
- (3) Are the regulations obsolete or otherwise appropriate for amendment or repeal? Yes No
- (4) Are the regulations effective in accomplishing their intended purpose? Yes No

B. Outreach and Research. (State Government Article, §10-135(a)(2)(i)–(viii), Annotated Code of Maryland)

- (1) List any stakeholders invited to review the regulations and provide a summary of their participation in and input into the review process.

Insurers, producers, and consumers were alerted to the review via notices posted on the following pages of the Maryland Insurance Administration's (MIA) website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Notices included an invitation to comment, along with a contact name and information. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. One comment was received on this chapter (CareFirst).

- (2) List any other affected agencies that were invited to review the regulations and provide a summary of their participation in and input into the review process.

All State agencies were notified through publication in the *Maryland Register* and on the DSD website. Additionally, emails were sent to the principal counsel for each of the following agencies:

Department of Aging
Department of Business and Economic Development
Department of Health and Mental Hygiene
Department of Labor, Licensing and Regulation
Maryland Health Benefit Exchange

No comments were received.

- (3) Describe the process used to solicit public comment, including:
- (a) any notice published in the *Maryland Register*;
 - (b) any notice published in newspapers of general circulation;
 - (c) any notice posted on the unit's website or on a Statewide website created for units to post notices of regulation review;
 - (d) any mailing by the adopting authority; and
 - (e) any public hearing held.

Notice was published in the *Maryland Register*, on the DSD website, and on the following pages of the MIA website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. No comments, other than the stakeholder comment described in B(1) of this report, were received.

- (4) Provide summaries of:
- (a) all comments received from stakeholders, affected units, or the public; and
 - (b) the adopting authority's responses to those comments.

COMMENT: CareFirst suggested that this chapter be repealed in its entirety, stating that it is no longer needed in light of federal health care reform.

RESPONSE: The MIA disagrees that this chapter is no longer needed. While health care reform dictates which benefits are required in small employer and individual health benefit plan contracts, health care reform did not negate the mandates in Maryland law that apply to large group contracts. §15-801 of the Insurance Article, the mandate upon which these regulations are based, is still in effect and still applies to group contracts that are not issued to small employer groups. Therefore, no amendments to this chapter will be proposed in response to this comment.

- (5) Describe any interunit conflict reviewed and the resolution or proposed resolution of that conflict.

N/A.

(6) Provide a summary of any relevant scientific data gathered.

N/A.

(7) Provide a summary of any relevant information gathered related to the regulations of other states or the federal government.

These regulations are drafted to implement a unique Maryland law, §15-801 of the Insurance Article. The National Association of Insurance Commissioners (NAIC) does not have a model law or regulation that is relevant to this chapter.

(8) Provide a summary of any other relevant information gathered.

A review of this Chapter revealed that Regulation .04B is in violation of the §2711 of the Affordable Care Act (ACA). This regulation contains references to permissible “maximum annual and lifetime limits.” These types of limits have been prohibited for grandfathered and non-grandfathered group health plans since 2010. Therefore, the MIA will propose that regulation .04B be amended to delete references to “maximum annual and lifetime limits.”

C. Under COMAR 01.01.2003.20E(3), does the agency have any existing policy statements, guidelines, or standards being applied or enforced which should be promulgated as regulations, in accordance with the Administrative Procedure Act? Yes No

Has the agency promulgated all regulations required by recent legislation? Yes No

Provide explanations of the above responses, as needed:

There are no existing policy statements, guidelines, or standards pertaining to group health insurance options for Alzheimer’s disease and for diseases of the elderly being applied or enforced which should be promulgated as regulations in accordance with the Administrative Procedure Act; however, as noted in section B(8) of this report, the ACA has prohibited “maximum annual and lifetime limits” in group health plans since 2010. Accordingly, the MIA will propose amendments to COMAR 31.11.05.04B to delete references to “maximum annual and lifetime limits.”

D. Actions Needed. (State Government Article, §10-135(a)(2)(ix) – (xi), Annotated Code of Maryland) (check all that apply)

- no action
- X amendment
- repeal
- repeal and adopt new regulations
- reorganization

Summary:

This chapter continues to be necessary for the public interest, and continues to be supported by statutory authority and judicial opinions. These regulations are needed as guidance to large group insurers and nonprofit health service plans as to what optional benefits are required to be offered to comply with the requirements of §15-801 of the Insurance Article.

The MIA will be proposing the following technical amendments to this regulation:

- An amendment is needed to bring this chapter into compliance with §2711 of the ACA. Specifically, references to permissible maximum annual and lifetime limits are required to be repealed; and
- §14-124(b) of the Insurance Article should be added to the list of statutory authority for these regulations, as §15-801 of the Insurance Article applies to nonprofit health service plans.

Person performing review:

Catherine Grason

Title:

Director of Special
Projects, Office of the
Commissioner

**Regulatory Review and Evaluation Act
Evaluation Report Form
2012 – 2020**

Chapter Codification:

COMAR 31.11.07

Chapter Name:

Small Employer Group Health Insurance—Self-Employed Individuals

Authority:

Insurance Article, §§2-109, 15-1201, 15-1203, 15-1206, 15-1209, and 15-1210; Health-General Article, §19-706(i); Annotated Code of Maryland

Date Originally Adopted or Last Amended:

November 11, 2002

Purpose:

The purpose of this chapter is to provide standards for carriers that offer the comprehensive standard health benefit plan to self-employed individuals.

A. Review Criteria. (State Government Article, §10-132(1)(i), Annotated Code of Maryland; COMAR 01.01.2003.20E)

- (1) Do the regulations continue to be necessary for the public interest? Yes No
- (2) Do the regulations continue to be supported by statutory authority and judicial opinion? Yes No
- (3) Are the regulations obsolete or otherwise appropriate for amendment or repeal? Yes No
- (4) Are the regulations effective in accomplishing their intended purpose? Yes No

B. Outreach and Research. (State Government Article, §10-135(a)(2)(i)–(viii), Annotated Code of Maryland)

- (1) List any stakeholders invited to review the regulations and provide a summary of their participation in and input into the review process.

Insurers, producers, and consumers were alerted to the review via notices posted on the following pages of the Maryland Insurance Administration's (MIA) website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Notices included an invitation to comment, along with a contact name and information. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. Two sets of comments were received (CareFirst and United Healthcare).

- (2) List any other affected agencies that were invited to review the regulations and provide a summary of their participation in and input into the review process.

All State agencies were notified through publication in the *Maryland Register* and on the DSD website. Additionally, emails were sent to the principal counsel for each of the following agencies:

Department of Aging
Department of Business and Economic Development
Department of Health and Mental Hygiene
Department of Labor, Licensing and Regulation
Maryland Health Benefit Exchange

No comments were received.

- (3) Describe the process used to solicit public comment, including:
- (a) any notice published in the *Maryland Register*;
 - (b) any notice published in newspapers of general circulation;
 - (c) any notice posted on the unit's website or on a Statewide website created for units to post notices of regulation review;
 - (d) any mailing by the adopting authority; and
 - (e) any public hearing held.

Notice was published in the *Maryland Register*, on the DSD website, and on the following pages of the MIA website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. No comments, other than the stakeholder comments described in B(1) of this report, were received.

- (4) Provide summaries of:
- (a) all comments received from stakeholders, affected units, or the public; and
 - (b) the adopting authority's responses to those comments.

COMMENT: CareFirst suggested that this chapter be repealed in its entirety, stating that it is no longer needed in light of federal healthcare reform.

RESPONSE: The MIA agrees with this comment. The MIA published a proposed action to repeal chapter 31.11.07 in the *Maryland Register* on April 4, 2014.

COMMENT: United Healthcare noted that it considers a self-employed individual in a one-employee group to be a "small employer." United Healthcare suggested that, "there is a likelihood that these one-employee groups might trend toward obtaining coverage through the Maryland Individual Exchange in 2014 instead of the group commercial business. If that is case this regulation might be further reviewed."

RESPONSE: These regulations establish open enrollment periods for self-employed individuals who wish to purchase coverage as a group of one in the small employer market. Maryland law (§ 15-1203, Insurance Article) was amended to no longer permit self-employed individuals to purchase coverage for groups of one in the small employer market, making these regulations obsolete. See Acts 2013, ch. 368, § 2, effective January 1, 2014. Accordingly, the MIA published a proposed action to repeal chapter 31.11.07 in the *Maryland Register* on April 4, 2014.

(5) Describe any interunit conflict reviewed and the resolution or proposed resolution of that conflict.

N/A.

(6) Provide a summary of any relevant scientific data gathered.

N/A.

(7) Provide a summary of any relevant information gathered related to the regulations of other states or the federal government.

No other relevant information was gathered regarding National Association of Insurance Commissioners (NAIC) model regulations or regulations of other states since the MIA has proposed repeal of this chapter.

(8) Provide a summary of any other relevant information gathered.

N/A.

C. Under COMAR 01.01.2003.20E(3), does the agency have any existing policy statements, guidelines, or standards being applied or enforced which should be promulgated as regulations, in accordance with the Administrative Procedure Act? Yes No

Has the agency promulgated all regulations required by recent legislation? Yes No

Provide explanations of the above responses, as needed:

N/A.

D. **Actions Needed.** (State Government Article, §10-135(a)(2)(ix) – (xi), Annotated Code of Maryland) (check all that apply)

no action

amendment

X repeal

repeal and adopt new regulations

reorganization

Summary:

This chapter is no longer needed. It established open enrollment periods for self-employed individuals who wanted to purchase coverage as groups of one in the small employer market. Maryland law (§15-1203, Insurance Article) was amended to no longer permit self-employed individuals to purchase coverage for groups of one in the small employer market, making these regulations obsolete.

The MIA published a proposed action to repeal chapter 31.11.07 in the *Maryland Register* on April 4, 2014. The public comment period for this proposed action ended on May 5, 2014 and no comments were received. The MIA will publish a notice of final action in the *Maryland Register* in the near future.

Person performing review:

Catherine Grason

Title:

Director of Special
Projects, Office of the
Commissioner

**Regulatory Review and Evaluation Act
Evaluation Report Form
2012 – 2020**

Chapter Codification:

Chapter Name:

Authority:

Date Originally Adopted or Last Amended:

Purpose:

A. Review Criteria. (State Government Article, §10-132(1)(i), Annotated Code of Maryland; COMAR 01.01.2003.20E)

- (1) Do the regulations continue to be necessary for the public interest? Yes No
- (2) Do the regulations continue to be supported by statutory authority and judicial opinion? Yes No
- (3) Are the regulations obsolete or otherwise appropriate for amendment or repeal? Yes No
- (4) Are the regulations effective in accomplishing their intended purpose? Yes No

B. Outreach and Research. (State Government Article, §10-135(a)(2)(i)–(viii), Annotated Code of Maryland)

- (1) List any stakeholders invited to review the regulations and provide a summary of their participation in and input into the review process.

Insurers, producers, and consumers were alerted to the review via notices posted on the following pages of the Maryland Insurance Administration's (MIA) website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Notices included an invitation to comment, along with a contact name and information. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. One comment was received on this chapter (CareFirst).

- (2) List any other affected agencies that were invited to review the regulations and provide a summary of their participation in and input into the review process.

All State agencies were notified through publication in the *Maryland Register* and on the DSD website. Additionally, emails were sent to the principal counsel for each of the following agencies:

Department of Aging
Department of Business and Economic Development
Department of Health and Mental Hygiene
Department of Labor, Licensing and Regulation
Maryland Health Benefit Exchange

No comments were received.

- (3) Describe the process used to solicit public comment, including:
- (a) any notice published in the *Maryland Register*;
 - (b) any notice published in newspapers of general circulation;
 - (c) any notice posted on the unit's website or on a Statewide website created for units to post notices of regulation review;
 - (d) any mailing by the adopting authority; and
 - (e) any public hearing held.

Notice was published in the *Maryland Register*, on the DSD website, and on the following pages of the MIA website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. No comments, other than the stakeholder comment described in B(1) of this report, were received.

- (4) Provide summaries of:
- (a) all comments received from stakeholders, affected units, or the public; and
 - (b) the adopting authority's responses to those comments.

COMMENT: CareFirst suggested that this chapter be repealed in its entirety, stating that it is no longer needed in light of federal health care reform.

RESPONSE: The MIA disagrees that this chapter is no longer needed. These regulations are still used to determine the geographic areas that carriers may use to vary premium rates in Maryland. Geographic rating areas are required by the Affordable Care Act and associated federal regulations.

- (5) Describe any interunit conflict reviewed and the resolution or proposed resolution of that conflict.

N/A.

(6) Provide a summary of any relevant scientific data gathered.

N/A.

(7) Provide a summary of any relevant information gathered related to the regulations of other states or the federal government.

No National Association of Insurance Commissioners (NAIC) model regulation is applicable to this regulation, as geographic rating areas are unique to each state.

(8) Provide a summary of any other relevant information gathered.

N/A.

C. Under COMAR 01.01.2003.20E(3), does the agency have any existing policy statements, guidelines, or standards being applied or enforced which should be promulgated as regulations, in accordance with the Administrative Procedure Act? Yes No

Has the agency promulgated all regulations required by recent legislation? Yes No

Provide explanations of the above responses, as needed:

N/A. There are no existing policy statements, guidelines, or standards pertaining to small group health insurance geographic rating areas being applied or enforced which should be promulgated as regulations in accordance with the Administrative Procedure Act. Likewise, there is no recent legislation pertaining to small group health insurance geographic rating areas being applied or enforced requiring promulgation of regulations or amendments to COMAR 31.11.08.

D. **Actions Needed.** (State Government Article, §10-135(a)(2)(ix) – (xi), Annotated Code of Maryland) (check all that apply)

- no action
- amendment
- repeal
- repeal and adopt new regulations
- reorganization

Summary:

This chapter continues to be necessary for the public interest, and continues to be supported by statutory authority and judicial opinions. These regulations are needed as guidance to carriers offering small group health benefit plans in determining the geographic areas that carriers may use to vary premium rates in Maryland, consistent with §15-1205 of the Insurance Article. Therefore, the MIA recommends no action on this chapter at this time.

Person performing review:

Catherine Grason

Title:

Director of Special
Projects, Office of the
Commissioner

**Regulatory Review and Evaluation Act
Evaluation Report Form
2012 – 2020**

Chapter Codification:

Chapter Name:

Authority:

Date Originally Adopted or Last Amended:

Purpose:

A. Review Criteria. (State Government Article, §10-132(1)(i), Annotated Code of Maryland; COMAR 01.01.2003.20E)

- (1) Do the regulations continue to be necessary for the public interest? Yes No
- (2) Do the regulations continue to be supported by statutory authority and judicial opinion? Yes No
- (3) Are the regulations obsolete or otherwise appropriate for amendment or repeal? Yes No
- (4) Are the regulations effective in accomplishing their intended purpose? Yes No

B. Outreach and Research. (State Government Article, §10-135(a)(2)(i)–(viii), Annotated Code of Maryland)

- (1) List any stakeholders invited to review the regulations and provide a summary of their participation in and input into the review process.

- (2) List any other affected agencies that were invited to review the regulations and provide a summary of their participation in and input into the review process.

All State agencies were notified through publication in the *Maryland Register* and on the DSD website. Additionally, emails were sent to the principal counsel for each of the following agencies:

Department of Aging
Department of Business and Economic Development
Department of Health and Mental Hygiene
Department of Labor, Licensing and Regulation
Maryland Health Benefit Exchange

No comments were received.

- (3) Describe the process used to solicit public comment, including:
- (a) any notice published in the *Maryland Register*;
 - (b) any notice published in newspapers of general circulation;
 - (c) any notice posted on the unit's website or on a Statewide website created for units to post notices of regulation review;
 - (d) any mailing by the adopting authority; and
 - (e) any public hearing held.

Notice was published in the *Maryland Register*, on the DSD website, and on the following pages of the MIA website: Proposed Regulations, News Center, For Insurers, For Producers, and For Consumers. In addition, subscribers to these web pages received an email message alerting them to the regulatory review notice. Every notice included an email link for people wishing to submit comments. Comments were collected for sixty (60) days. No comments, other than the stakeholder comments described in B(1) of this report, were received.

- (4) Provide summaries of:
- (a) all comments received from stakeholders, affected units, or the public; and
 - (b) the adopting authority's responses to those comments.

COMMENT: CareFirst suggested that recent legislative changes implementing the Affordable Care Act ("ACA") eliminate most concerns of this regulation; however, it recommended that the regulation should only be repealed if the MIA believes that concerns with all out of state group and blanket products are adequately addressed through other requirements and processes.

RESPONSE: The MIA believes that this regulation continues to serve an important purpose. The vast majority of the out-of-state filings that are made pursuant to COMAR 31.11.09 do not involve contracts that are subject to the ACA. These regulations are still needed for these "excepted benefits," such as hospital indemnity, specified disease, Medicare supplement, long-term care, accidental death, and disability insurance. These regulations have been helpful to the MIA for enforcing the requirements of §15-310, Insurance Article, Annotated Code of Maryland. Therefore, the MIA declines to make any changes to these regulations at this time.

Comments and responses continue on the next page.

COMMENT: With respect to COMAR 31.11.09.02, United Healthcare recommended that “the MIA authorize small employer group policies written in another jurisdiction to reflect the medical benefits coverage in the jurisdiction where at least 51% of the small group’s employees reside. For this purpose, all eligible employees in all locations and/or in all commonly owned employer locations would be counted (“the Base Location”). If there is no determinable majority of employees in any one jurisdiction, the Base Location for purposes of determining the applicable group medical benefits coverage written in another jurisdiction shall be the state where the plurality of eligible and (emphasis added) enrolling employees are employed.” In this scenario, “the employer would certify to the numbers of employees eligible for coverage (using MIA’s definition of an eligible employee), and the definition of small group would have to be satisfied in accordance with MIA regulations, as well.”

RESPONSE: United Healthcare is requesting a change that goes beyond the statutory authority for these regulations found in §15-310 of the Insurance Article; thus, the change that United Healthcare is requesting would require a legislative change. The purpose of these regulations is to provide standards for insurers seeking the Commissioner’s approval to solicit coverage in Maryland under a group or blanket health insurance policy issued in another jurisdiction. Under the current law, any contract issued and delivered in Maryland is subject to Maryland laws. This requirement is consistent with the requirements in the ACA, and with §15-310 of the Insurance Article. For these reasons, the MIA declines to make any changes to this regulation at this time.

(5) Describe any interunit conflict reviewed and the resolution or proposed resolution of that conflict.

N/A.

(6) Provide a summary of any relevant scientific data gathered.

N/A.

(7) Provide a summary of any relevant information gathered related to the regulations of other states or the federal government.

These regulations are needed to implement a unique Maryland law. MIA staff reviewed the model laws and model regulations that have been developed by the National Association of Insurance Commissioners (NAIC) and no model exists for this particular issue.

(8) Provide a summary of any other relevant information gathered.

N/A.

C. Under COMAR 01.01.2003.20E(3), does the agency have any existing policy statements, guidelines, or standards being applied or enforced which should be promulgated as regulations, in accordance with the Administrative Procedure Act? Yes No

Has the agency promulgated all regulations required by recent legislation? Yes No

Provide explanations of the above responses, as needed:

N/A. There are no existing policy statements, guidelines, or standards pertaining to the solicitation of coverage under group health or blanket health insurance policies issued in another jurisdiction being applied or enforced which should be promulgated as regulations in accordance with the Administrative Procedure Act. Likewise, there is no recent legislation pertaining to the solicitation of coverage under group health or blanket health insurance policies issued in another jurisdiction requiring promulgation of regulations or amendments to COMAR 31.11.09.

D. **Actions Needed.** (State Government Article, §10-135(a)(2)(ix) – (xi), Annotated Code of Maryland)
(check all that apply)

- no action
- amendment
- repeal
- repeal and adopt new regulations
- reorganization

Summary:

This chapter continues to be necessary for the public interest, and continues to be supported by statutory authority and judicial opinions. These regulations continue to be relevant and needed to clarify filing requirements under §15-310 of the Insurance Article. No changes are recommended at this time.

Person performing review:

Catherine Grason

Title:

Director of Special
Projects, Office of the
Commissioner