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BULLETIN 13-30

Date: November 19, 2013

To: Insurers, Nonprofit Health Service Plans, and Health Maintenance Organizations

Re: Renewal of Health Benefit Plans That Do Not Comply with Certain Affordable Care Act Requirements

On November 14, 2013, the U.S. Department of Health & Human Services (HHS) announced a transitional policy under which it will use its enforcement discretion to permit health insurance issuers to continue to renew plans for individuals and small businesses for policy years starting between January 1, 2014 and October 1, 2014 that do not comply with certain Affordable Care Act ("ACA") requirements that become effective on January 1, 2014. These requirements include, for example, the need for a plan to cover certain essential health benefits, annual limitations on cost-sharing, provisions relating to health insurance premium rates, and guaranteed availability of coverage.

The purpose of this Bulletin is to clarify that Maryland law permits health insurers, non-profit health service plans, and health maintenance organizations (collectively, "carriers") to renew non-grandfathered individual and small group health benefit plans that are not ACA compliant for terms that extend beyond December 31, 2013, provided that those renewals take effect by January 1, 2014.

Background

In contrast with the situation in some states, carriers in Maryland's individual and small group markets generally are not cancelling non-ACA compliant health benefit plans across the board effective January 1, 2014. Rather, in recent weeks, carriers have notified policyholders that as those non-compliant plans come up for renewal on various dates between January 1 and December 31, 2014, those plans cannot be renewed because they do not comply with federal and State laws that apply to non-grandfathered plans issued or renewed on or after January 1, 2014.

Policyholders have several options. First, they can act now to purchase an ACA-compliant plan, from the same carrier¹ or another carrier, either through Maryland's new health insurance marketplace – Maryland Health Connection – or in the insurance markets outside of Maryland Health Connection. Second, they can wait until their policy comes up for renewal in 2014 and then purchase an ACA-compliant policy. Finally, some carriers have offered policyholders a third option: if a policyholder prefers to keep a current non-ACA compliant plan until near the end of 2014, the policyholder can renew the existing policy early, in 2013, for another full year, before the new ACA requirements take effect. Just as with any other policy renewal, policies renewed under this “early renewal” option are subject to any changes in premium rates that the Maryland Insurance Administration has approved for that policy since the policyholder's last renewal date.

Early Renewals Permitted

The Commissioner's obligation to enforce Maryland's Insurance Article is clearly mandated by law. *See* Md. Code Ann., Ins. Art. § 2-108 (“[T]he Commissioner . . . shall enforce this article [and] shall perform the duties imposed on the Commissioner by this article.”). The ACA requirements that are the subject of HHS's transitional policy are now Maryland law and apply to non-grandfathered policies issued or renewed on or after January 1, 2014.


Unlike certain other states, however, Maryland has not prohibited the “early renewal” option. So far, thousands of Marylanders have taken carriers up on early renewal offers to keep their existing plans. In many cases, this option has extended the availability of existing, non-ACA compliant policies as late as November 30, 2014. This means, however, that a policyholder's deductible resets on December 1, 2013, when the policy renews, and again for the plan year beginning January 1, 2014.

In order to avoid multiple deductible resets in any given year, and to provide policyholders who wish to retain non-ACA compliant plans through the end of 2014 with an opportunity to do so, this Bulletin clarifies that early renewals for non-ACA compliant plans may take effect as late as 12:00 A.M. on January 1, 2014. If a carrier chooses to offer an early renewal option, the carrier should advise its policyholders that they also have the option to purchase a plan that provides all of the consumer protections and benefits afforded by the ACA, that they may be eligible for advance premium tax credits and cost-sharing subsidies if they purchase such a plan through Maryland Health Connection, and that early renewed policies will be subject to any approved changes in premium rates.

¹ This option is only available for carriers who have elected to sell non-grandfathered ACA-compliant plans in Maryland in 2014.

Any questions about this Bulletin may be directed to Brenda Wilson, Associate Commissioner, Life & Health at brenda.wilson@maryland.gov.

Signature on original

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Therese M. Goldsmith
Commissioner