

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 536

(Delegate Pendergrass)

Health and Government Operations

Finance

Maryland Insurance Commissioner - Authority - Federal Health Emergency

This emergency bill requires the Insurance Commissioner to adopt regulations that may be applied when a national or public health emergency (PHE) – that within the Commissioner’s discretion affects the State – is (1) issued by the President of the United States under the federal National Emergencies Act or the U.S. Secretary of Health and Human Services under the federal Public Health Services Act and (2) based on a serious threat to health resulting from the existence of a deadly agent. A regulation activated in response to a national emergency or PHE may not apply beyond the duration of the President’s or the Secretary’s declaration. Uncodified language requires a carrier that issues Medicare supplement policies to offer a special enrollment period for certain individuals enrolled in Medicare Part B and Medicaid; this requirement terminates one year after the termination of the national emergency or PHE, whichever is later.

Fiscal Summary

State Effect: Any additional workload for the Maryland Insurance Administration can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A carrier that issues Medicare supplement policies in the State must issue any Medicare supplement policy the carrier sells in the State to an individual eligible for Medicare if the individual (1) is enrolled in Medicare Part B while enrolled in Medicaid; (2) remained in Medicaid due to a suspension of terminations by Medicaid during a state

of emergency and was not disenrolled or terminated until at least six months following the effective date of enrollment in Medicare Part B; (3) applies for the Medicare supplement policy during the 63-day period following the later of notice of termination or disenrollment or the date of termination from Medicaid; and (4) submits evidence of the date of termination or disenrollment from Medicaid with the application for a Medicare supplement policy.

For individuals who meet the above criteria, 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 carrier; (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 on these individuals.

Current Law:

Deadly Agent

Section 14-3A-01(d) of the Public Safety Article defines “deadly agent” as (1) anthrax, Ebola, plague, smallpox, tularemia, or other bacterial, fungal, rickettsial, or viral agent, biological toxin, or other biological agent capable of causing extensive loss of life or serious disability; (2) mustard gas, nerve gas, or other chemical agent capable of causing extensive loss of life or serious disability; or (3) radiation at levels capable of causing extensive loss of life or serious disability.

Emergency Powers of the Maryland Insurance Commission

The Commissioner is required to adopt regulations that may be applied when (1) the Governor declares a state of emergency for the State or an area within the State or (2) the President of the United States issues a major disaster or emergency declaration for the State or an area within the State under the federal Stafford Act. The regulations may apply to any person regulated by the Commissioner and address specified issues and any other activity necessary to protect the residents of the State. To activate such a regulation, the Commissioner must issue a bulletin. A regulation may not apply beyond the duration of, or the geographical area included within, the Governor’s or President’s declaration of a state of emergency or disaster.

Medicare Supplement Policies

For individuals age 65 and older, federal law provides a one-time-only open enrollment period during the first six months after enrollment in Medicare Part B. During this period, individuals can buy any Medicare supplement policy sold in the State. Maryland law

requires carriers to extend a similar, limited open enrollment period to individuals younger than age 65 who are eligible for Medicare due to a disability. During this open enrollment period, carriers may not deny or condition the issuance or effectiveness of a Medicare supplement; discriminate in the pricing of a policy plan; or deny, reduce, or condition coverage or apply an increase premium rating under such a plan because of the health status, claims experience, receipt of health care, or medical condition of the applicant. Generally, if an individual seeks to enroll in a Medicare supplement policy plan (or change plans) after this open enrollment period, guaranteed issue requirements do not apply. Thus, an individual may be subject to medical underwriting and/or charged higher premiums based on health status.

Current Public Health Emergency

In response to COVID-19, the U.S. Secretary of Health and Human Services, under the federal Public Health Service Act, declared a PHE in the entire United States on January 31, 2020. The PHE was last extended January 14, 2022, and will remain effective until at least April 16, 2022.

The federal Families First Coronavirus Response Act provides a 6.2 percentage point increase in the federal Medicaid matching rate if states meet certain maintenance of eligibility (MOE) requirements, including ensuring continuous coverage for current Medicaid participants. Since the start of the PHE, no Medicaid participants have been disenrolled from Medicaid due to the MOE (except for very specific circumstances, such as an enrollee moving out of the State).

During the PHE, some individuals lost their eligibility for Medicaid but became eligible for Medicare due to age or disability. Due to the moratorium on disenrollment, these individuals have been allowed to remain in Medicaid and, thus, have not exercised their enrollment options for Medicare supplement policies. Once the PHE ends (as soon as April 16, 2022), these individuals will be covered only by Medicare, but their initial open enrollment period and access to guaranteed issuance of Medicare supplement policies will have passed. The bill provides a special open enrollment period for individuals to select a Medicare supplement policy following the end of the PHE.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Budget and Management; Department of Legislative Services

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