Maryland General Assembly
Department of Legislative Services

Emergency/Proposed Regulations
Maryland Insurance Administration

(DLS Control No. 14-366)

Overview and Legal and Fiscal Impact

These emergency/proposed regulations provide standard "Continuity of Health Care Notice" forms that health insurance carriers and managed care organizations (MCOs) must use to give notice to a new enrollee who, on or after January 1, 2015, is transitioning from one carrier to another carrier or between a carrier and the Maryland Medical Assistance Program or the Maryland Children's Health Program, and specify when the notices must be provided.

The emergency/proposed regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Maryland Insurance Administration:

Health Insurance – General: Continuity of Health Care Notice:
COMAR 31.10.42.01-.04

Legal Analysis

Background

Chapter 152 of 2012 directed the Maryland Health Benefit Exchange (Exchange), in consultation with specified State agencies and stakeholders, to study and make recommendations on how to promote continuity of care for Maryland residents who are transitioning from one insurance carrier to another and between an insurance carrier and the Maryland Medical Assistance Program (Medicaid) or the Maryland Children's Health Program. In response, the Exchange established a Continuity of Care Advisory Committee, which met several times during October and November 2012, and engaged a consultant (the Hilltop Institute at the University of Maryland, Baltimore County) to conduct a study and assist the advisory committee in developing options for continuity of care. Based on the advisory committee's report summarizing the consultant study findings and its comments on the report, the Exchange assessed available continuity of care options and issued a report, "Recommendations for Continuity of Care," to the Governor and the General Assembly on January 4, 2013.

Recommendations of the Exchange include (1) requiring the health benefit plan receiving a new enrollee to accept the enrollee's prior authorization determination from the relinquishing health benefit plan for certain treatments, for a specified period of time; and (2) requiring the health benefit plan receiving a new enrollee to allow the enrollee to receive care from an

out-of-network provider for certain treatments, for a specified period of time. Section 15-140 of the Insurance Article, which was enacted by Chapter 153 of 2013, Section 3 and takes effect on January 1, 2015, incorporates these recommendations and establishes the circumstances under which the continuity of care provisions apply.

Specifically, § 15-140(c) requires a receiving carrier or MCO, at the request of an enrollee or other specified individuals, to accept a preauthorization from a relinquishing carrier or MCO, or a third-party administrator (TPA), for procedures, treatments, medications, or services offered by the receiving carrier or MCO for (1) the lesser of the course of treatment or 90 days; and (2) the duration of a pregnancy and the initial postpartum visit. At the request and with the consent of an enrollee or other specified individuals, the relinquishing carrier or MCO, or the TPA, must provide a copy of the preauthorization within 10 days after receipt of the request.

Under § 15-140(d), a receiving carrier or MCO must allow a new enrollee to continue to receive specified health care services, including services for acute and serious chronic conditions, pregnancy, mental health conditions, and substance abuse disorders, being rendered by a nonparticipating provider at the time of the enrollee's transition to the receiving health benefit plan or MCO. The enrollee must be allowed to continue to receive the services from a nonparticipating provider for (1) the lesser of the course of treatment or 90 days; and (2) the duration of a pregnancy and the initial postpartum visit. The receiving carrier or MCO must pay the nonparticipating provider the rate and method of payment the receiving carrier or MCO normally would pay and use for similar participating providers. The rates and methods of payment must ensure that (1) the enrollee is not subject to balance billing; and (2) the copayments, deductibles, and coinsurance required of the enrollee are the same as if the services were received from a participating provider. A nonparticipating provider who declines to accept the rate and method of compensation of the receiving carrier or MCO may discontinue providing services to an enrollee, or may continue to provide the services and, under certain circumstances, may balance bill the enrollee.

With respect to any benefit or service provided through the Medicaid fee-for-service program (1) the continuity of care requirements under § 15-140(c) and (d) apply only when an enrollee is transitioning from Medicaid to a carrier, and not when an enrollee is transitioning from a carrier to Medicaid (§ 15-140(b)(2)(i)); and (2) the requirements under § 15-140(c) apply only to behavioral health and dental benefits, to the extent they are authorized by a TPA (§ 15-140(c)(1)(ii)). Furthermore, with respect to dental benefits, the requirements of § 15-140(c) and (d) apply only to covered services for which a coordinated treatment plan is in progress (§ 15-140(b)(2)(iii)).

Under § 15-140(f)(1), a receiving carrier or MCO is required to provide notice to a new enrollee of the enrollee's options and responsibilities under § 15-140 in a manner prescribed by the Maryland Insurance Commissioner. The purpose of the emergency/proposed regulations is to provide a standard notice regarding continuity of care and specify when the notice is required to be given.

Summary of Regulations

The proposed action adds Regulations .01 through .04 under a new Chapter 42, Continuity of Health Care Notice. Regulation .01 provides that Chapter 42 applies to each

(1) receiving carrier that issues or delivers individual or group health benefit plans in Maryland; and (2) receiving managed care organization that enrolls Program recipients in Maryland. Definitions for terms used in the chapter, including "carrier," "managed care organization," "receiving carrier," and "receiving managed care organization," are established in Regulation .02. Regulation .03 specifies when a receiving carrier or a receiving MCO must send a Continuity of Health Care Notice to a transitioning enrollee, and provides for the language and format of the notice. Finally, Regulation .04A and B provides the form to be used as the Continuity of Health Care Notice by a receiving carrier and a receiving MCO, respectively. The notices (1) inform a new enrollee of the continuity of health care rights provided under § 15-410(c) and (d) of the Insurance Article, and limitations on those rights, as discussed above; (2) provide examples of how the right to use non-network providers works; and (3) provide information on how to appeal a denial of an enrollee's continuity of health care rights, how to file a complaint if an appeal is denied, and who to contact for questions about the notices.

Legal Issue

The emergency/proposed regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Maryland Insurance Administration cites §§ 2-109(a)(1), 15-140, and 15-10D-01 of the Insurance Article and Chapter 159 of 2013, Section 3, as legal authority for the emergency/proposed regulations. The citation to §§ 2-109(a)(1) and 15-140 and to Chapter 159 of 2013, Section 3, which enacted § 15-140, is correct. The citation to Chapter 159 is necessary because, as noted above, § 15-140 does not take effect until January 1, 2015. Section 15-10D-01 does not provide authority for the regulations.

Section 2-109(a)(1) establishes the general authority of the Maryland Insurance Commissioner to adopt regulations to carry out the Insurance Article. As discussed above, § 15-140, as enacted by Chapter 159, governs continuity of health care for Maryland residents transitioning from one carrier to another carrier and between a carrier and the Maryland Medical Assistance Program or the Maryland Children's Program. The specific provisions of § 15-140 most relevant to the proposed action are discussed above. In addition, § 15-140(g) authorizes the Commissioner (as well as the Secretary of Health and Mental Hygiene) to adopt regulations to enforce the requirements of § 15-140.

The emergency/proposed regulations comply with the legislative intent of the law.

Reason for Emergency Status

The administration has requested emergency status from January 1, 2015, until April 30, 2015, to cover the period until final adoption of the accompanying permanent, nonemergency regulations. This emergency period is within the normal time frames approved by the committee. The administration indicates that emergency status is needed because the requirement under § 15-140(f)(1) of the Insurance Article for receiving carriers and MCOs to provide notice to a new enrollee of the enrollee's options and responsibilities under § 15-140 goes into effect on January 1, 2015, and the emergency/proposed regulations, which establish the form of the notice to be used, must be in effect on that date so that it is available for use by receiving carriers and MCOs.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations set forth the standards for the continuity-of-care health care notice required under Chapter 159 of 2013 (HB 228). Chapter 159 requires a "receiving carrier" or Medicaid managed care organization to provide notice (in a manner prescribed by the Maryland Insurance Commissioner) to a new enrollee of the enrollee's options and responsibilities with respect to continuity of care. The Maryland Insurance Administration advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The Maryland Insurance Administration advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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