

MARYLAND REGISTER

Proposed Action on Regulations

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2. COMAR Codification

Title Subtitle Chapter Regulation

31 01 02 02, .03, .06

3. Name of Promulgating Authority

Maryland Insurance Administration

4. Name of Regulations Coordinator

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 07/08/2020.

Date

08/13/2020

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

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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 regulation 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 (§ 15-909 of the Insurance Article), there is a six-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 six 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 (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	NONE	
(1) Cost	(-)	Unknown
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	
(1) Benefit	(+)	Unknown

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

D(1). 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(1). 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 insuranceregreview.mia@maryland.gov, or fax to 410-468-2020. Comments will be accepted through October 25, 2020. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2021

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No additional funds are necessary for the implementation of these regulations

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

These regulations impact insurance carriers, insurance carriers are not usually small businesses.

G. Small Business Worksheet:

Attached Document:

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 01 GENERAL PROVISIONS

Chapter 02 Emergency Powers

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

.02 Applicability.

A. This chapter applies to:

(1) – (2) (text unchanged)

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

B. (text unchanged)

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) – (10) (text unchanged)

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

(12) *“Deductible” means the amount of allowable charges that shall be 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 to the 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)—(7) 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.*

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