

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 217

(Chair, Finance Committee)(By Request - Departmental -
Maryland Insurance Administration)

Finance

Health and Government Operations

Health Insurance - Conformity With Federal Law

This departmental bill aligns Maryland health insurance law and regulations with existing federal rules and regulations, including consumer protection measures under the federal No Surprises Act (NSA). The bill alters the material errors that trigger special enrollment periods in the Small Business Health Options Program (SHOP) Exchange and permits the Maryland Health Benefit Exchange (MHBE) to adopt an expanded open enrollment period and alternate effective dates of coverage. The bill requires that specified regulations adopted by the Insurance Commissioner be consistent with federal regulations in effect December 1, 2023, and updates the definition of “grandfathered plan.”

Fiscal Summary

State Effect: Any change in State activities does not materially affect State finances.

Local Effect: None.

Small Business Effect: The Maryland Insurance Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Definitions of Emergency Services and Emergency Medical Condition

The bill revises the definition of “emergency services” and adds a definition of “emergency medical condition” under § 19-701 of the Health-General Article to reflect updated definitions in NSA. The bill also updates the definitions of “emergency medical condition” and “emergency services” under § 15-1A-14 of the Insurance Article, including specifying

that “emergency medical condition” includes a mental health condition or substance use disorder; clarifying that services performed by a behavioral health crisis center are subject to the provisions of NSA; clarifying that certain additional items and services are not considered emergency services; and specifying that § 19-710(p) of the Health-General Article (which prohibits balance billing of health maintenance organization enrollees) applies to emergency services.

Coverage of Emergency Services

The bill clarifies that a carrier may not require prior authorization for emergency services. A carrier is prohibited from limiting what constitutes an emergency medical condition solely based on diagnosis codes. A carrier may not impose any other term or condition on coverage for emergency services except for the exclusion or coordination of benefits, a waiting period, and applicable cost sharing. A carrier must calculate and apply cost-sharing amounts for emergency services as specified in federal regulations.

Application of Existing Insurance Provisions to All Grandfathered Plans

The bill applies existing provisions of Maryland insurance law regarding choice/designation of primary care providers (§ 15-1A-13 of the Insurance Article) and coverage of emergency services (§ 15-1A-14 of the Insurance Article) to all grandfathered plans consistent with federal regulations under NSA.

Material Errors and Special Enrollment Periods

The bill removes the requirement that an eligible employee or dependent must adequately demonstrate to MHBE that a material error influenced their decision to purchase a qualified health plan in order to trigger a special enrollment period. The bill also adds cost sharing as a material error that can trigger a special enrollment period. These provisions apply to SHOP Exchange benefit plans only.

Maryland Regulations

The bill requires that the following regulations adopted by the Insurance Commissioner be consistent with federal regulations that were in effect December 1, 2023 (rather than those that were in effect December 1, 2019): (1) regulations regarding the criteria that a health benefit plan must meet to be considered a grandfathered plan; (2) regulations regarding the criteria that a health benefit plan must meet to be considered a health benefit plan that covers essential health benefits; and (3) regulations regarding medical loss ratio.

Annual Open Enrollment Period

The bill authorizes MHBE to adopt an expanded open enrollment period and alternative effective dates of coverage if authorized by the U.S. Department of Health and Human Services. This provision reflects federal rules adopted in 2022 that extended the open enrollment period for federally facilitated exchanges to November 1 through January 15, and permitted state-based marketplaces the option to adopt expanded open enrollment periods and to adopt alternate effective dates for coverage.

Definition of Grandfathered Plan

The bill updates the definition of “grandfathered plan” to mean a health benefit plan that meets the criteria established under federal regulations and any corresponding federal rules and guidance as those provisions were in effect December 1, 2023 (rather than 2019).

Appendix 1 provides a summary of the bill’s provisions by statutory citation and includes the federal regulatory citation/justification to which the bill’s changes seek to conform.

Current Law: NSA, enacted as part of the Consolidated Appropriations Act, 2021, requires health plans to cover surprise bills for emergency services, as well as out-of-network provider bills rendered at in-network hospitals and facilities. Balance billing is prohibited, with specified exceptions, and out-of-network providers may not send patients bills for excess charges. NSA permits access to an independent dispute resolution process for any surprise medical bill following a 30-day period when the plan and provider try to negotiate a payment amount.

Background: Since passage of the federal Patient Protection and Affordable Care Act (ACA) in 2010, Maryland enacted legislation nearly annually through 2020 to conform with federal ACA requirements. In 2022, emergency legislation was enacted to conform with provisions of NSA. Since that time, additional federal regulatory changes have occurred; thus, the bill seeks to ensure that State law conforms with the most recent ACA and NSA rules and regulations.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 30 (Chair, Health and Government Operations Committee)(By Request - Departmental - Maryland Insurance Administration) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - January 22, 2024
js/ljm Third Reader - March 14, 2024
Revised - Amendment(s) - March 14, 2024

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**Appendix 1
Provisions of the Bill**

Section of Bill	Summary	Federal Citation/Justification
§ 19-701 HG	Revises the definition of “emergency services” and adds a definition of “emergency medical condition” to reflect updated definitions in the federal NSA.	Keeps definitions consistent between the Health-General Article (which includes the primary definition of “emergency services” used in health maintenance organization contracts and as a cross-reference in other parts of Maryland law) and the Insurance Article.
§ 15-1A-01 INS	Updates the definition of “grandfathered plan” to reflect additional federal guidance in effect December 1, 2023.	45 CFR § 147.140.
§ 15-1A-03(a) INS	Requires that Maryland regulations regarding the criteria to be a grandfathered plan be consistent with federal regulations as of December 1, 2023.	The <i>HHS Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage Final Rule</i> (85 FR 81097) amended requirements for plans to preserve their grandfathered status effective June 15, 2021.
§ 15-1A-03(c) INS	Applies existing statutory provisions regarding designation of primary care providers and coverage of emergency services to all grandfathered plans.	NSA 45 CFR § 149.110 45 CFR § 149.310.
§ 15-1A-04 INS	Requires that Maryland regulations regarding a health benefit plan that covers essential health benefits be consistent with federal regulations as of December 1, 2023.	The <i>HHS Notice of Benefit and Payment Parameters for 2023 Final Rule</i> (87 FR 27390) clarified what is considered discriminatory plan design effective July 1, 2022.

<u>Section of Bill</u>	<u>Summary</u>	<u>Federal Citation/Justification</u>
§ 15-1A-14(a) INS	Updates the definitions of “emergency medical condition” and “emergency services”; clarifies that services performed by a behavioral health crisis center are subject to NSA; clarifies that certain additional items and services are not emergency services; and clarifies that § 19-710(p) of the Health-General Article (which prohibits balance billing of health maintenance organization enrollees) applies to emergency services.	NSA 45 CFR § 149.110(c) 45 CFR § 149.410(b).
§ 15-1A-14(b) INS	Clarifies that a carrier may not require prior authorization for emergency services; prohibits a carrier from limiting what constitutes an emergency medical condition solely based on diagnosis codes or imposing any other term or condition on coverage for emergency services, with specified exceptions.	NSA 45 CFR § 149.110(b).
§ 15-1A-14(c) INS	Requires a carrier to calculate and apply cost-sharing amounts and provide reimbursement for emergency care in accordance with federal regulations.	NSA 45 CFR § 149.110.
§ 15-1A-16 INS	Requires that Maryland regulations regarding medical loss ratio be consistent with federal regulations as of December 1, 2023.	The <i>HHS Notice of Benefit and Payment Parameters for 2023 Final Rule</i> (87 FR 27393) revised requirements relating to medical loss ratio effective July 1, 2022.
§ 15-1208.2 INS	Clarifies and revises material errors that trigger a special enrollment period in the SHOP Exchange.	The <i>HHS Notice of Benefit and Payment Parameters for 2024 Final Rule</i> (88 FR 25919) removed the burden of proof that a qualified individual/dependent adequately demonstrate a material error and added cost sharing to the list of material errors that can trigger a special enrollment period effective June 18, 2023.
§ 15-1316 INS	Authorizes the MHBE to adopt an expanded open enrollment period and alternate effective dates of coverage if authorized by HHS.	The <i>HHS Notice of Benefit and Payment Parameters for 2022 Final Rule</i> (86 FR 53503) permits state-based marketplaces to adopt expanded open enrollment periods.

CFR: Code of Federal Regulations
FR: Federal Register
HG: Health-General Article
HHS: U.S. Department of Health and Human Services
INS: Insurance Article
MHBE: Maryland Health Benefit Exchange
NSA: No Surprises Act
SHOP: Small Business Health Options Program

Source: Maryland Insurance Administration; Department of Legislative Services

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Health Insurance - Conformity With Federal Law

BILL NUMBER: SB0217

PREPARED BY: Jamie Sexton

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

There is no economic impact on small businesses associated with this proposal.