Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 169 (Delegate Hough, *et al.*)
Health and Government Operations

Health Insurance - Rollback of Federal Patient Protection and Affordable Care Act Conforming Provisions

This bill alters State insurance law to undo certain (but not all) provisions previously adopted to conform to the federal Patient Protection and Affordable Care Act (ACA).

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances because federal law would continue to be enforced.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Chapter 368 of 2013 altered State insurance law to implement and conform to ACA and corresponding federal regulations adopted by the federal Centers for Medicare and Medicaid Services (CMS). Changes included expanding the Insurance Commissioner's authority to enforce specific ACA requirements, such as annual limits on cost sharing and minimum benefit requirements for catastrophic plans, clarifying which current laws will apply only to health benefit plans that are either grandfathered plans or plans issued before January 1, 2014, adding new open and special enrollment periods for the individual and small employer markets, and applying certain requirements on individual health benefit plans to bona fide association plans.

ACA Provisions Applicable in Maryland: The bill specifies that the following ACA provisions no longer apply to individual health insurance coverage and health insurance coverage offered in the small group and large group markets in Maryland: annual limitations on cost sharing; child-only plan offerings in the individual market; minimum benefit requirements for catastrophic plans; health insurance premium rates; coverage for individuals participating in approved clinical trials; contract requirements for stand-alone dental plans sold in the Maryland Health Benefit Exchange (MHBE); and the annual limit on deductibles for the employer-sponsored plans in the small group market. The bill restores the definition of "child dependent" to the definition in place prior to Chapter 368 of 2013.

Preexisting Condition Exclusions: The bill repeals language that authorizes carriers to impose a preexisting condition provision, under specified circumstances, *only* for plan years that begin prior to January 1, 2014, and for individual health benefit policies that were issued or delivered prior to January 1, 2014.

Bona Fide Wellness Programs: The bill repeals a provision that increased the maximum financial incentives for bona fide wellness programs to 30% of the cost of employee-only coverage (or family coverage when the plan provides coverage for family members) and reestablishes the maximum financial incentives at 20% of the cost of coverage. The bill also repeals language authorizing the maximum amount of incentives to be increased by an additional 20 percentage points to the extent that the additional amount is in connection with a program to prevent or reduce tobacco use.

Comprehensive Standard Health Benefit Plan: The bill reestablishes the requirement that the Insurance Commissioner annually transmit to the Maryland Health Care Commission information necessary to evaluate the Comprehensive Standard Health Benefit Plan (CSHBP).

Out-of-state Association Contracts: Disclosure requirements on insurers and nonprofit health service plans that require evidence of individual insurability for coverage under an out-of-state association contract are reinstituted.

Small Employers: The bill restores the definitions of "eligible employee" and "small employer" in the small group market to the definitions in place prior to Chapter 368 of 2013. Additional definitions linked with ACA are repealed.

The bill repeals language specifying how the number of employees of an employer must be determined for MHBE and instead requires that all employees be counted, including part-time employees and employees who are not eligible for coverage through the employer.

The bill repeals the requirement that a carrier set premium rates for the entire plan year for each small employer.

SHOP Exchange: The prohibition against a carrier imposing a minimum participation requirement for small employers if the small employer group applies for coverage during the open enrollment period is repealed.

Grandfathered Health Plans: The bill removes language that specifies that the laws regarding increasing access to care choices or lowering the cost-sharing arrangement in CSHBP and guaranteed issuance, guaranteed renewal, and adjusted community rating apply only to grandfathered health plans beginning on January 1, 2014, and instead makes these provisions applicable to all health plans.

Small Employer Open Enrollment Period: The bill repeals the requirement that a carrier establish a standardized annual open enrollment period of at least 30 days for each small employer before the end of the small employer's plan year and a special open enrollment period for each eligible employee who becomes eligible outside of the initial or annual open enrollment period or experiences a triggering event.

Grace Periods in the Individual Exchange: The bill repeals provisions requiring qualified health plans issued in the Individual Exchange to include a grace period provision for a qualified individual who is receiving advance payments of federal premium tax credits and has paid at least one full month's premium during the benefit year and related requirements of the carrier relating to the grace period.

Individual Market Open Enrollment Period: The bill repeals the requirement that a carrier provide a limited open enrollment period for an individual enrolled in a noncalendar year individual health benefit plan to enroll in a health benefit plan issued by the carrier. The requirement that carriers that sell health benefit plans to individuals in the State must establish an annual open enrollment period, beginning October 15, 2014, is also repealed, as are the provisions regarding which options must be provided during that open enrollment period. Similar provisions regarding special open enrollment periods for individuals with certain triggering events are also repealed. Provisions authorizing certain Native Americans to enroll in a health benefit plan or change from one benefit plan to another in the Individual Exchange one time per month are repealed.

Exception to Requirement to Renew an Individual Health Benefit Plan: The bill repeals language permitting a health maintenance organization (HMO) to limit the individuals who may apply for coverage to those who live or reside in the HMO's service area and deny coverage to individuals if the HMO demonstrates to the Insurance Commissioner that (1) it will not have the capacity to adequately deliver services to additional individuals due to obligations to existing enrollees and (2) it is denying coverage uniformly without regard to claims experience or health status-related factors.

The bill also repeals provisions authorizing a carrier to deny a health benefit plan to an individual if the carrier demonstrates to the Insurance Commissioner that (1) it does not have the financial reserves to offer additional coverage and (2) it is denying coverage uniformly without regard to claims experience or health status-related factors.

Background:

ACA Insurance Provisions: Among other provisions, ACA includes a number of patient protection provisions that took effect on September 23, 2010, for new policies upon issuance and for existing policies upon renewal, including coverage for children up to age 26 on a parent's policy, a ban on lifetime limits and on preexisting condition limitations on children, a restriction on annual limits, and coverage of certain preventive services without cost sharing. Additional insurance reforms took effect January 1, 2014, including policies that prohibit most insurance plans from excluding people for preexisting conditions, discriminating based on health status, and imposing annual monetary caps on coverage as well as reforms to require guaranteed issue and renewal of policies, premium rating rules, nondiscrimination in benefits, and mental health and substance abuse parity.

Grandfathered Health Plans: To allow individuals to keep the health insurance coverage they already had, ACA "grandfathered" health plans that were in effect on the date ACA was enacted (March 23, 2010) and exempted such plans from many required changes. Grandfathered health plans must adhere to certain consumer protections under ACA and may not significantly reduce benefits, increase cost sharing, or, for a health benefit plan sponsored by an employer, reduce the employer's share of premiums.

Small Employers: Though there is no requirement that small businesses offer health insurance, under ACA, businesses with more than 50 employees will have to pay a penalty if they do not offer affordable coverage. Businesses with 50 or fewer full-time employees are exempt from these penalties.

Bona Fide Wellness Programs: A bona fide wellness program is a program designed to promote health or prevent or detect disease or illness, reduce or avoid poor clinical outcomes, prevent complications from medical conditions, promote healthy behaviors, or prevent and control injury. Chapters 682 and 683 of 2009 authorized carriers to provide reasonable incentives to an insured, subscriber, or member for participation in a bona fide wellness program under specified circumstances and clarified that it is not discrimination or a rebate for a carrier to provide such incentives if the incentives are provided as specified. A carrier may not make participation in a bona fide wellness program a condition of coverage. Participation must be voluntary, and a penalty may not be imposed for nonparticipation. A carrier may not market the bona fide wellness program solely as an incentive or inducement to purchase coverage from the carrier. Except in

specified situations, a wellness program may not condition an incentive on an individual satisfying a standard related to a health factor.

Additional Comments: Although the bill repeals many ACA provisions that are in Maryland law, federal law prevails and preempts any State law that contradicts it. Therefore, the Maryland Insurance Administration would continue to review contracts and rates as required under ACA, but it would cite the federal requirements rather than the State requirements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Baltimore City; Howard and Prince George's counties; Maryland Insurance Administration; Department of Budget and Management; Department of Health and Mental Hygiene; Department of Legislative Services

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