

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 801

(Chair, Health and Government Operations
Committee)(By Request - Departmental - Maryland
Insurance Administration)

Health and Government Operations

Finance

Health Insurance - Required Conformity With Federal Law

This departmental bill further alters State health insurance law to conform with and implement the federal Patient Protection and Affordable Care Act (ACA) and corresponding federal regulations.

The bill takes effect June 1, 2016.

Fiscal Summary

State Effect: Any impact on the Maryland Insurance Administration (MIA) can be handled with existing budgeted resources. The Maryland Health Benefit Exchange's (MHBE) Small Business Health Options Program (SHOP) Exchange plans are already in compliance with the bill's provisions. Revenues are not affected.

Local Effect: None.

Small Business Effect: MIA 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/Current Law/Background:

Preexisting Condition Exclusions in the Group Market: The bill repeals obsolete provisions of law that authorized imposition of preexisting condition limitations in the group market for plan years that began before January 1, 2014.

All preexisting condition exclusions, including for grandfathered health plans, are prohibited in the group market under federal regulations (45 CFR 147.108) for plan years that began on or after January 1, 2014. MIA has existing authority to enforce this prohibition under § 15-137.1(a)(2) of the Insurance Article.

Creditable Coverage: The bill repeals references to creditable coverage with respect to preexisting condition exclusions and exclusionary riders relating to individual health benefit plans.

All definitions of creditable coverage have been repealed from the Insurance Article in accordance with federal regulations (45 CFR 148.120). Creditable coverage is health insurance coverage that an individual held previously that could be used to offset a preexisting condition exclusion in a new health plan.

Preexisting Condition Exclusions for Individual Health Benefit Plans: Under current law, a carrier may impose a preexisting condition exclusion or limitation in certain individual health benefit plans issued before January 1, 2014. However, ACA prohibits preexisting condition exclusions in nongrandfathered health benefit plans. Thus, the bill amends this date to March 23, 2010, which is the date of enactment of ACA, to apply the provision to grandfathered contracts only.

Definition of Member: The definition of “member” is expanded to include an individual who has applied for coverage under a health benefit plan and who is determined by a carrier to be ineligible. For purposes of appeal rights under current law, a “coverage decision” includes a denial of coverage. Thus, this change requires carriers that deny coverage to applicants to provide the notice of appeal rights required by federal regulations.

Participation Requirements in the Small Group Market: A carrier may impose minimum participation requirements in the small group market. To determine whether the participation requirement is met, a carrier may not consider specified employees, including those who have group spousal coverage that provides benefits similar to or exceeding those provided under the Standard Plan. The bill replaces the *Standard Plan*, the lowest plan that could be offered prior to ACA, with a *bronze level health plan*, the lowest plan that

can be offered under ACA. MIA advises this change is consistent with federal regulations (45 CFR 146.150(e)).

Special Enrollment Periods for Small Employers: The bill adds child support order or other court order, divorce, legal separation, or death to the list of events that trigger a special enrollment period *to begin on the date of the event* for employees of small employers. The bill also clarifies the effective date and duration of the special enrollment period for these triggering events for SHOP Exchange plans. These special enrollment periods are permitted under current law, but the date on which they begin and their duration are not specified. MIA notes that federal regulations only require these special enrollment periods in the SHOP Exchange; however, Maryland law provides the same options both in and out of the SHOP Exchange.

Open Enrollment Periods for Small Employers – Individuals Who Experience a Triggering Event: The individuals eligible to enroll during a special enrollment period are expanded to include an eligible employee or dependent who has a loss of coverage under a noncalendar year group health benefit plan or individual health benefit plan, even if the eligible employee or dependent has the option to renew the coverage under the individual or group health benefit plan. Loss of coverage for this trigger is considered to be the last day of the plan or policy year of the health benefit plan.

Federal regulations (45 CFR 155.420(d)(1)(ii)) require this special enrollment period and apply to all plans sold through MHBE. This change is required to extend the special enrollment period to plans sold outside of MHBE. MIA advises that this special enrollment period is intended to address such instances as when two spouses covered under the same policy decide that it would be more affordable to each have their own employer coverage (*i.e.*, one employer decides to subsidize only the employer's premium). Unless both plans have the same renewal date, there would be no special enrollment period available, necessitating double coverage (and double premiums) for a period of time.

Grace Periods: Under current law, a qualified health plan (QHP) must include a grace period provision applicable to a qualified individual who (1) is receiving advance payment of federal premium tax credits and (2) has paid at least one full month's premium during the benefit year. The bill repeals the requirement that the individual have paid at least one full month's premium and instead specifies that the grace period be provided to an individual who *fails to pay premiums timely*. The bill also specifies that the provision must (1) provide a grace period of three consecutive months *after the initial premium payment to begin coverage has been paid* and (2) apply to QHPs renewed in accordance with certain provisions of law without the qualified individual having to pay the first month's premium following renewal.

Student Health Plans: A student health plan must comply with the requirements of federal regulations (45 CFR 147.145), as interpreted and implemented by the federal Centers for Medicare and Medicaid Services (CMS).

On February 29, 2016, CMS issued a final rule under which issuers of student health plans may establish one or more separate risk pools for each college or university, provided the risk pools are based on a bona fide school-related classification and not on health status. The premium rates for each risk pool must reflect the claims experience of individuals who comprise the risk pool, and any adjustments to rates within a risk pool must be actuarially justified. Student health plans are no longer required to offer coverage within specific metal levels, but they must offer an actuarial value of at least 60%. CMS often issues guidelines for implementation of ACA regulations relating to student health plans; thus, this language reduces the frequency by which statute may need to be amended.

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

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Health Benefit Exchange, Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2016
kb/ljm Revised - House Third Reader - April 1, 2016

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Appendix 1 – Provisions of the Bill

Section of Bill	Summary	Federal Citation
§ 15-137.1 INS	Corrects a cross reference	45 CFR 146.145
§ 15-508 INS	Repeals obsolete provisions that authorized imposition of preexisting condition limitations in the group market for plan years that began before January 1, 2014	45 CFR 147.108
§ 15-508.1 INS	Repeals references to “creditable coverage” with respect to preexisting condition exclusions and exclusionary riders relating to individual health benefit plans Amends a date to apply a provision authorizing a carrier to impose a preexisting condition exclusion or limitation to grandfathered contracts only	45 CFR 148.120 No longer permitted
§ 15-10D-01 INS	Expands the definition of “member” to include an individual who has applied for and been denied coverage under a health benefit plan	29 CFR 2560.503-1 and 45 CFR 147.136
§ 15-1206 INS	Substitutes reference to the “Standard Plan” with “a bronze level health plan”	45 CFR 146.150(e)
§ 15-1208.1 INS	Clarifies the effective date and duration of special enrollment periods for certain triggering events both inside and outside of the Small Business Health Options Program (SHOP) Exchange	45 CFR 155.420(b) and 45 CFR 155.725
§ 15-1208.2 INS	Adds a triggering event for an eligible employee or dependent who has a loss of coverage under a noncalendar year group health benefit plan or individual health benefit plan, even if the individual has the option to renew the coverage under the individual or group health benefit plan	45 CFR 155.420
§ 15-1315 INS	Clarifies the circumstances in which a grace period provision applies under a qualified health plan	45 CFR 156.270
§ 15-1318 INS	Requires student health plans to comply with specified federal regulations as interpreted and implemented by the federal Centers for Medicare and Medicaid Services (CMS)	45 CFR 147.145 and related CMS guidance

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Health Insurance—Conformity with Federal Law

BILL NUMBER: HB 801

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PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

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