



December 29, 2023

The Honorable Bill Ferguson  
President of the Senate  
State House, Room H-107  
100 State Circle  
Annapolis, MD 21401

The Honorable Adrienne A. Jones  
Speaker of the House of Delegates  
State House, H-101  
100 State Circle  
Annapolis, MD 21401

The Honorable Pamela Beidle  
Chair, Senate Finance Committee  
Miller Senate Office Building  
3 East Wing 11 Bladen Street  
Annapolis, MD 21401

The Honorable Joseline A. Pena-Melnyk  
Chair, House HGO Committee  
241 Taylor House Office Building  
6 Bladen Street  
Annapolis, MD 21401

**RE: Report required by Senate Bill 872 (Ch. 621) / House Bill 959 (Ch. 620) 2020 – MSAR 12765**

Dear President Ferguson, Speaker Jones, Chair Beidle, and Chair Pena-Melnyk:

Pursuant to Senate Bill 872 (Ch. 621) / House Bill 959 (Ch. 620) which passed during the 2020 Legislative session; the Maryland Insurance Administration (MIA), the Health Education and Advocacy Unit of the Office of the Attorney General (HEAU), and the Maryland Health Benefit Exchange (MHBE) must submit a joint report regarding any repeals or amendments to federal Affordable Care Act (ACA) statutes and regulations that are determined to be to the benefit or detriment of Maryland consumers.

Specifically, each agency: (1) shall monitor federal statutes and regulations to determine whether provisions of the federal Affordable Care Act or corresponding regulations are repealed or amended to the benefit or detriment of Maryland consumers; and (2) on or before December 31 each year until 2024, in accordance with §2-1257 of the State Government Article, submit a joint report to the Senate Finance Committee and the House Health and Government Operations Committee on: (i) any repeals or amendments determined to be a benefit or detriment to Maryland consumers; and (ii) recommendations for legislation the General Assembly should enact to address the repeals or amendments.

The attached report encompasses those pertinent changes determined by MIA, HEAU and MHBE.

Five printed copies of this report have been mailed to the DLS library for its records.

Sincerely,

Kathleen A. Birrane  
Insurance Commissioner

Kimberly S. Cammarata  
Sr. Assistant Attorney General  
Director, HEAU

Michele S. Eberle  
Executive Director, MHBE

cc: Sarah T. Albert, Department of Legislative Services (5 copies)

# **2023 Annual Report on the Impact of Changes to the Affordable Care Act in Maryland**

**Senate Bill 872 (Ch. 621) / House Bill 959 (Ch. 620) 2020**

**(MSAR #12765)**

**Maryland Insurance Administration  
Maryland Health Benefit Exchange  
Health Education and Advocacy Unit – Office of the Attorney General**

**December 29, 2023**

## **Changes to ACA Regulations via 2024 Notice of Benefit and Payment Parameters Final Rule**

The Notice of Benefit and Payment Parameters (NBPP) is published annually to make updates to regulations governing the implementation and enforcement of the ACA. The 2024 NBPP Final Rule was published on April 27, 2023, and included new and revised special enrollment period (SEP) rules for plan year 2024, a new rule requiring coverage of dependents who turn 26 during the plan year until the end of that plan year, and a new rule addressing plan marketing names used by carriers.

### *Revisions to Special Enrollment Periods – 45 CFR §155.420*

#### A. 45 CFR §155.420(b)(2)(iv) – Accelerated Effective Dates for Individuals Experiencing Certain Triggering Events

The Final Rule revised this regulation to give Exchanges the option to provide an accelerated coverage effective date for individuals who enroll in coverage through a SEP after experiencing certain triggering events. MHBE plans to operationalize the option for consumers to choose these accelerated effective dates for plan year 2024. These revisions are to the benefit of Maryland consumers because, as explained in the preamble to the Final Rule, these accelerated effective dates could help to reduce potential gaps in coverage between an individual's loss of coverage and the effective date of their On-Exchange coverage.

For Individual Exchange plans, the applicable triggering events are those found at 45 CFR §§155.420(d)(1), (d)(6)(iii), and (d)(15). These triggering events relate to the loss of minimum essential coverage; becoming eligible for advance payments of the premium tax credit while enrolled in an employer sponsored plan; and cessation of employer contributions or government subsidies for COBRA continuation coverage. At the option of the Exchange, qualified individuals, enrollees, or dependents who experience these triggering events and make a plan selection on or before the last day of the month preceding the triggering event have a coverage effective date of the first day of the month in which the triggering event occurs.

In the SHOP Exchange, the applicable triggering events are those found at 45 CFR §155.420(d)(1). The triggering events at 45 CFR §155.420(d)(6)(iii) and (15) are not applicable to small group plans under the federal rules.

The MIA required carriers to revise their contracts to incorporate these changes into their plan year 2024 Individual and SHOP On-Exchange contracts. To operationalize these optional accelerated effective dates, MHBE is proposing updates to its regulations at COMAR 14.35.07.12F(3) to offer enrollees the option to choose these accelerated effective dates.

This regulatory change does not apply to Off-Exchange contracts.

B. 45 CFR §155.420(c)(6) – 90-Day SEP for Individuals Losing Medicaid or CHIP Coverage

The Final Rule added this optional extended length SEP for the Individual Exchange which increases the enrollment window from 60 days to 90 days for an individual who loses Medicaid or CHIP coverage. MHBE plans to operationalize this new SEP in August 2024, following the expiration of the temporary Unwinding SEP that allows anyone who loses Medicaid coverage at any point during the Medicaid unwinding to enroll in coverage through the Exchange by July 31, 2024.

The MIA required carriers to revise their contracts to incorporate this new SEP into their plan year 2024 Individual On-Exchange contracts. To operationalize this SEP, MHBE is proposing appropriate regulatory revisions at COMAR 14.35.07.12E.

This regulatory change does not apply to Individual Off-Exchange contracts or to the SHOP/Small Group market.

C. 45 CFR §155.420(d)(12) – Plan Display Errors

Previously, this regulation required that an eligible individual or dependent must prove the existence of a material plan display error in order to access a SEP through this triggering event. The Final Rule revised this regulation to remove the burden of proof from the eligible individual or dependent and further expanded the scope of this triggering event to include an error in cost-sharing as a material error.

The MIA required carriers to revise their contracts to incorporate these changes into their plan year 2024 Individual and SHOP On-Exchange contracts. This federal regulatory change applies to Individual and SHOP On-Exchange contracts. Under Maryland law, the previous version of this triggering event for SHOP Exchange contracts is currently described in §15-1208.2(d)(4)(vi)3. of the Insurance Article, which must be revised to maintain conformity with the federal regulation. This statutory revision will be presented to the General Assembly during the 2024 Session in the MIA’s Health Insurance Federal Conformity Bill. MHBE is also proposing revisions to COMAR 14.35.07.14G in conformity with this change in federal regulation.

This regulation does not apply to Off-Exchange contracts.

*Coverage Until End of Plan Year in which Individual Turns 26*

The Final Rule added 45 CFR §155.430(b)(3) to require carriers offering Individual On-Exchange plans on the Federal platform to continue coverage for individuals who turn 26 during the plan year until the end of that plan year. The Final Rule permits State-Based Exchanges to impose a corresponding requirement on carriers, and MHBE is proposing to add COMAR 14.35.14.06F in conformity with this new federal regulation. This regulatory change aligns with existing practices in Maryland’s Individual market, although the MIA did require carriers to revise their plan year 2024 contracts to formally align with the new rule.

*45 CFR 156.225(c) – Regulation of Plan Names*

The Final Rule requires any plan marketing names shown on contract forms issued to consumers to include correct information, without omission of material fact or inclusion of content that is misleading. This regulatory change is to the benefit of Maryland consumers and further gives the MIA and MHBE the authority to require changes to plan names when it is determined during regulatory review of an ACA filing that a carrier is using a plan name which includes incorrect information, omits material facts, or could potentially mislead a consumer. The MIA can enforce this regulatory change through existing authority. MHBE is proposing to revise its Carrier Certification Standards at COMAR 14.35.15.05D(2) in conformity with this new federal regulation.

**Carryover Recommendations from Previous Joint ACA Reports**

2021 Joint Report

*2020 Grandfathered Group Health Plans Final Rule*

On December 15, 2020, the U.S. Department of Treasury, the U.S. Department of Labor, and the U.S. Department of Health and Human Services (HHS) (the tri-agencies) issued the final rule *Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage* (85 FR 81097) that amended the requirements for grandfathered group health plans and grandfathered group health insurance coverage to preserve their grandfather status.

Following the enactment of this Final Rule, which went into effect on June 15, 2021, the MIA, HEAU, and MHBE recommended in the 2021 Joint Report that the General Assembly consider whether the date referenced in §15-1A-03 of Insurance Article should be updated from December 1, 2019 to June 15, 2021. The agencies repeated this recommendation on page five of the 2022 Joint Report and further recommended such a change be considered at §15-1A-01(e)(1) of the Insurance Article.

These statutory revisions will be presented to the General Assembly during the 2024 Session in the MIA’s Health Insurance Federal Conformity Bill, which recommends a uniform date of December 1, 2023 for all proposed date changes under Title 15, Subtitle 1A of the Insurance Article. The MHBE and HEAU have not reviewed this bill or the impact of the proposed date changes.

For a full discussion of this issue, refer to the “2020 Grandfathered Group Health Plan Final Rule” section on page five of the 2021 Joint Report.

*No Surprises Act (NSA) of the federal Consolidated Appropriations Act of 2021*

In the 2021 Joint Report, the MIA, HEAU, and MHBE recommended §§15-1A-03, 13, and 14 of the Insurance Article be amended to conform to federal law, since certain provisions of the existing law were preempted by the more consumer protective federal requirements of the

NSA beginning on January 1, 2022. While the General Assembly did take up and pass legislation to implement the provisions of the NSA in Maryland during the 2022 session (Senate Bill 180, Chapter 221, Acts of 2022), the MIA, HEAU, and MHBE recommended in the 2022 Joint Report that the General Assembly revise the definition of “Emergency Medical Condition” at §15-1A-14(a)(2) to bring it into alignment with the NSA. They also recommended the General Assembly update §15-1A-13 and §15-1A-03 to align with the NSA’s requirements related to the choice of a healthcare professional as the consumer’s primary care provider, codified in §15-1A-13 of the Insurance Article, applicable to grandfathered health plans under the NSA, effective January 1, 2022.

The agencies repeat these recommendations this year. These statutory revisions in conformity with the NSA will be presented to the General Assembly during the 2024 Session in the MIA’s Health Insurance Federal Conformity Bill.

For a full discussion of this issue, refer to the “Consolidated Appropriations Act, 2021 (H.R. 133)” section on pages 10 and 11 of the 2021 Joint Report.

#### *Expanded Open Enrollment Period*

The 2022 NBPP Final Rule expanded the open enrollment period (OEP) on the federally-facilitated exchange from November 1 to January 15 and gave state-based marketplaces the option to adopt expanded OEPs of their own.<sup>1</sup> MHBE subsequently adopted an OEP matching that of the federally-facilitated exchanges and continues to use this expanded, ten-week OEP. In the 2021 Joint Report, the MIA, HEAU, and MHBE recommended the General Assembly consider whether to revise §15-1316 to specifically authorize MHBE to adopt the expanded OEP dates if permitted by the federal Department of Health and Human Services.

The agencies repeat this recommendation this year. This statutory revision will be presented to the General Assembly during the 2024 Session in the MIA’s Health Insurance Federal Conformity Bill.

For a full discussion of this issue, refer to the “Changes to the Open Enrollment Period – 45 CFR §155.410(e)” section on page four of the 2021 Joint Report.

#### 2022 Joint Report

##### *Presumptively Discriminatory Benefit Designs*

The 2023 NBPP Final Rule revised 45 CFR §156.125(a) to the benefit of Maryland consumers in an effort to “refine HHS’ [Essential Health Benefit (EHB)] nondiscrimination policy.” This regulation applies to non-grandfathered individual and small group plans, which includes those plans offered on Maryland’s Individual and Small Business Health Options Program (SHOP) Exchanges. To fully incorporate this revised federal regulation into Maryland

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<sup>1</sup> COMAR 14.35.07.11B(3) specifies MHBE’s open enrollment dates in 2022 and after as November 1<sup>st</sup> through January 15<sup>th</sup>. The dates were finalized in June of 2022.

law, the MIA, HEAU, and MHBE recommended in the 2022 Joint Report that the date within §15-1A-04(2) be updated to December 1, 2022.

This statutory revision will be presented to the General Assembly during the 2024 Session in the MIA’s Health Insurance Federal Conformity Bill, which recommends a uniform date of December 1, 2023 for all proposed date changes under Title 15, Subtitle 1A of the Insurance Article.

For a full discussion of this issue, refer to the “Presumptively Discriminatory Benefit Designs” section on page three of the 2022 Joint Report.

#### *Medical Loss Ratio (MLR) Updates*

The 2023 HHS NBPP Final Rule revised 45 CFR §158 to the benefit of Maryland consumers. This regulation applies to all grandfathered and non-grandfathered plans in the individual, small group and large group marketplaces, and outlines the requirements for reporting and calculation of the annual Medical Loss Ratio (MLR) report that is required under §158.110. The changes are to address loopholes that certain carriers may have been using to inappropriately overinflate their MLR to reduce or avoid MLR rebates due to consumers. To incorporate this revised federal regulation into Maryland law, the MIA, HEAU, and MHBE recommended in the 2022 Joint Report that the date within §15-1A-16 of the Insurance Article be updated to December 1, 2022.

This statutory revision will be presented to the General Assembly during the 2024 Session in the MIA’s health insurance Federal Conformity Bill, which recommends a uniform date of December 1, 2023 for all proposed date changes under Title 15, Subtitle 1A of the Insurance Article.

For a full discussion of this issue, refer to the “Medical Loss Ratio (MLR) Updates” section on pages four and five of the 2022 Joint Report.