

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 806 (Delegate Morgan, *et al.*)
Health and Government Operations

Maryland Health Benefit Exchange - Individual Exchange - Copper Plans to
Lower Rates

This bill requires the Maryland Health Benefit Exchange (MHBE), by October 1, 2019, to apply for a federal Section 1332 waiver to offer copper plans in the State. If approved, MHBE must offer copper plans in the Individual Exchange. Benefits mandated by the State benchmark plan or otherwise mandated by State law that are not essential health benefits (EHBs) may not be required in copper plans. A carrier may not offer individual health benefit plans in the State unless the carrier offers copper plans in the Individual Exchange. **The bill's provisions relating to copper plans are contingent on waiver approval, and the requirement for carriers to offer copper plans applies to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after January 1 of the year immediately following receipt of waiver approval. Otherwise, the bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: No effect in FY 2019. Minimal increase in special fund revenues for the Maryland Insurance Administration in FY 2021 only from the \$125 rate and form filing fee. Review of filings can likely be handled with existing budgeted resources. Special fund expenditures increase for MHBE by \$40,000 in FY 2020 only, as discussed below. Potential minimal increase in special fund revenues beginning in FY 2021 to the extent MHBE imposes specified monetary penalties.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Contingent on the approval of a Section 1332 waiver, MHBE must certify an individual health benefit plan as a copper plan if the plan provides for (1) the EHBs required under the federal Patient Protection and Affordable Care Act (ACA) and (2) individuals of any age. MHBE may not require a copper plan to provide coverage for benefits mandated under the Health-General Article or the Insurance Article that are not federal EHBs.

The bill establishes requirements for a health benefit plan to be certified as a copper plan that generally mirror existing requirements for existing metal level plans, including carrier requirements; prior approval of rates and deductibles from the Insurance Commissioner; and submission of specified disclosures to MHBE, the Commissioner, and the public.

A health benefit plan may not be denied certification as a copper plan solely on the grounds that it is a fee-for-service plan or through the imposition of premium price controls by MHBE. A managed care organization may not be required to offer a copper plan in the exchange.

Subject to contested case hearing provisions, MHBE may deny certification of a health benefit plan as a copper plan, or suspend or revoke certification, based on specified findings. In addition or alternatively, MHBE may impose other remedies or take other actions, including imposing a monetary penalty of up to \$5,000 for each violation. Certification requirements include providing data and meeting specified standards. A carrier may appeal an order or decision of MHBE and request a hearing, which stays a decision or order of MHBE. If a petition for judicial review is filed, the court has jurisdiction over the case.

Current Law/Background: Under Maryland law, there are more than 50 mandated health insurance benefits that certain carriers must provide to their enrollees. The ACA requires nongrandfathered health plans to cover 10 EHBs, which include items and services in the following categories: (1) ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and substance use disorder services, including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness services and chronic disease management; and (10) pediatric services, including dental and vision care.

Under § 31-116 of the Maryland Insurance Article, EHBs must be included in the State benchmark plan and, *notwithstanding any other benefits mandated by State law*, must be the benefits required in (1) all individual health benefit plans and health benefit plans

offered to small employers (except for grandfathered health plans) offered outside MHBE and (2) all qualified health plans (QHPs) offered in MHBE.

Maryland Health Benefit Exchange

Function: MHBE was created during the 2011 session to provide a marketplace for individuals and small businesses to purchase affordable health coverage. Through the Maryland Health Connection (MHC), Maryland residents can shop for health insurance plans, compare rates, and determine their eligibility for federal advanced premium tax credits (APTCs), cost-sharing reduction (CSR) plans, and public assistance programs such as Medicaid. An individual or family that selects a QHP enrolls in that program directly through MHC.

Qualified Health Plan Requirements: Under the ACA, to be certified as a QHP, an insurance plan must meet certain requirements, including providing at least 10 EHBs with no lifetime maximums and follow established limits on cost sharing (deductibles, copayments, and out-of-pocket maximum amounts). The same rules apply to plans sold both in and out of the exchange, but in order to be sold on the exchange, a health plan must be certified by MHBE as a QHP.

Carriers participating in either the Small Business Health Options Program or Individual Exchange are currently required to offer at least one QHP at the bronze, silver, and gold level of coverage. If a carrier participates in the Individual Exchange and offers any individual health benefit plan off-exchange, the carrier must offer at least one QHP at the silver and gold level of coverage.

Enrollment: For calendar 2019, 159,963 individuals have enrolled in a QHP through MHBE. Most enrollees are eligible for a federal APTC or to purchase a CSR plan. Four metal level plans are available: bronze; silver; gold; and platinum. Catastrophic plans are also available but only to individuals younger than age 30 or who have a hardship or affordability exemption. APTCs are not available with catastrophic plans.

Federal Advanced Premium Tax Credits: Federal APTCs are available to individuals with incomes between 100% and 400% of federal poverty guidelines (FPG) and help to make monthly premiums more affordable. In calendar 2019, 124,541 individuals enrolled in MHBE are eligible to receive federal APTCs to offset the cost of their insurance premiums. The monthly value of APTCs to Maryland residents in February 2019 alone was \$58.6 million. APTCs are not available to individuals who purchase catastrophic plans.

Cost-sharing Reduction Plans and Payments: CSR plans are silver-level plans with reduced cost sharing that insurers are required to offer under the ACA to enrollees with incomes between 100% and 250% FPG.

State Fiscal Effect: MHBE can apply for the waiver using existing budgeted resources. MHBE special fund expenditures increase by \$40,000 in fiscal 2020 only for information technology system modifications to provide for the new benefit plan category.

Assuming waiver approval, carriers would need to establish copper plans, submit them to MHBE for certification as QHPs, and then submit proposed premium rates to the Insurance Commissioner for rate approval before such plans could become available through MHC for plan year 2021. Accordingly, special fund revenues related to such filings are not assumed to be realized until fiscal 2021.

MHBE may deny certification of a copper plan, or suspend or revoke certification, based on specified findings. In addition or alternatively, MHBE may impose other remedies, including a monetary penalty of up to \$5,000 for each violation. If MHBE imposes a monetary penalty, special fund revenues increase minimally beginning in fiscal 2021.

Additional Comments: MHBE advises that federal law explicitly lays out the standards for catastrophic plans, including an age restriction. The copper plans proposed under the bill are essentially catastrophic plans. Under the bill, MHBE must ignore federal standards related to catastrophic plans; specifically, the bill requires the copper plans to provide coverage regardless of age.

Additional Information

Prior Introductions: HB 1509 of 2018, a substantially similar bill, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - March 13, 2019
an/ljm

Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510