MARYLAND HEALTH BENEFIT EXCHANGE

**MARYLAND HEALTH BENEFIT EXCHANGE RESPONSES TO INFORMAL PUBLIC COMMENTS ON PROPOSED COMAR 14.35.07 (version 1)**

**The following chart summarizes informal public comments submitted to Maryland Health Benefit Exchange (MHBE) by April 27, 2016 regarding proposed COMAR 14.35.07 and MHBE's response to each comment. Comments are organized by regulation (identified in the Source Comment column) and the commenting individual and/or organization is listed in the "Source" column (please refer to Source Key below for abbreviations guidance). Accepted comments are incorporated into the revised and redlined version two of proposed COMAR 14.35.07, which is also being shared at this time. MHBE will address these comments at the May 12, 2016 public meeting. Revisions to COMAR 14.35.01.02 (Definitions) are also being shared at this time and will be updated and re-posted as MHBE's shares revised and redline versions of proposed COMAR 14.35.14-.17.**

**Additional written comments may be submitted to MHBE regarding proposed COMAR 14.35.07 version 2 by May 23, 2016 at mhbe.policy@maryland.gov.**

**Source Key**

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| **Carefirst = CareFirst BlueCross BlueShield** | **HEAU = Office of Attorney General, Health Education and Advocacy Unit** | **MIA = Maryland Insurance Administration** |

**Summary of Comments Received and MHBE Response to Comments**

| Source | Source Comment | MHBE Response to Source Comment |
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| Carefirst, MIA, HEAU | **General Comment -** Requirements appear to repeat federal law, which may create discrepancies between the governing federal law and Exchange regulations when the federal government modifies or reinterprets the regulations in the future. The Exchange should not, and does not need to, codify federal regulations into State law for them to apply to Exchange operations. Moreover, even if the Exchange still feels it necessary to reiterate federal or State insurance law in Exchange regulation, the draft regulations do not mirror the language of existing federal or Maryland insurance law. Rather, the draft regulations only summarize or paraphrase portions of the highly complex applicable law. This is likely to cause unnecessary conflicting application of the governing laws and significant confusion for all stakeholders. | 45 CFR Parts 155 and 156, among others, instruct the Exchange to make a decision based on the requirements identified within the regulation. Therefore, MHBE believes it must, under the Maryland Administrative Procedure Act, set forth regulations that alert individuals to the eligibility requirements MHBE will enforce. Please refer to the document regarding MHBE's approach to implementing federal requirements in state regulations for additional information about this approach, which may be found here: http://www.marylandhbe.com/policy-legislation/public-comment/. |

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| Carefirst, MIA | **COMAR 14.35.07.02** (Definitions) - Recommendation that definitions either mirror the federal terms or terms used in other State laws and regulations or cite to them. Failure to make either modification, however, will likely cause unnecessary conflicting application of the governing laws and significant confusion for all stakeholders. Ensure that definitions captured within multiple chapters are reflected in COMAR 14.35.01.02. | Definitions have been cross-checked against federal definitions, the Insurance Article and State Medicaid regulations to ensure conformity across laws and rules. Definitions used across multiple chapters are included in COMAR 14.35.01.02.<br><br>For example, definition of "institution" amended to incorporate existing MA definition of medical institution under 10.09.24.02.37 and public institution under 10.09.24.02.46.<br><br>Clarification edits incorporated to distinguish plan variations - with cost sharing reductions and without - and metal levels in COMAR 14.35.01.02. |
| Chris Keen | **14.35.07.02(B)(4)** (Definition of CSR Plan for 101-150% FPL) **-** CSR amount should be 87% not 84%. | Edit incorporated. |
| MIA | **14.35.07.03(C)** (Information requirements for application) **-** Intent of income tax form filing requirement unclear as to 1) whether requirement is for filing at family or couple, 2) where there is an exception permitted and 3) if rule applies to Medicaid. | Clarification edits incorporated in (4) to align with 45 CFR 155.310(k)(3) and in (5) to specify that the tax filing requirement is specific to APTC/CSR not MA/MCHP under the definition of tax filer (45 CFR 155.300 and 14.35.02.16). |
| MIA | **14.35.07.03(D)(1)** (Information required of non-applicants) - Lead in confusing | Clarification edits incorporated to (C) and the definition of non-applicant under .02B(13). |
| Carefirst | **COMAR 14.35.07.03(E)** (Timing of eligibility determination) - Rule provides that individual may seek an eligibility determination at any time during the year. This may be true for Medicaid, but how does this align with enrollment periods? | An individual may submit an application and receive an eligibility determination at any time under 45 CFR 155.310(c). The individual, if otherwise eligible under .04, may only enroll if they are eligible for an SEP outside of the annual open enrollment. Clarification edits added. |
| MIA | **14.35.07.03(E) -** Add definition for "eligibility determination". | Definition added to 14.35.02.01. |
| Carefirst | **COMAR 14.35.07.03(F)** (Incomplete application) - This provision should be clarified to state that the coverage effective date will be the first day of the month after the *complete* application has been processed, unless the individual is otherwise eligible for a retroactive effective date based on an SEP. | An individual may submit an application and receive an eligibility determination at any time under 45 CFR 155.310(c). The individual, if otherwise eligible under .04, may only enroll under the effective dates specified in .10. |

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| MIA | **14.35.07.04(A) -** Remove reference to COMAR 14.35.11.04 which deals with notifications of right to request a fair hearing. | Clarification edit incorporated to specify that the notice will include notice of the right to request a fair hearing. |
| Carefirst | **COMAR 14.35.07.04(A)(1)** (QHP eligibility requirements) - Clarification required to clearly define the eligibility requirements. | Edits incorporated to clarify the three unique requirements (citizen/lawfully present, resident, not incarcerated). |
| Carefirst | **COMAR 14.35.07.04(B)-(C)** (Employer notification) - The proposed notice does not indicate if the Exchange has independently verified the employee's attestation that they were neither enrolled in employer-sponsored coverage nor eligible for affordable, minimum-value employer-sponsored coverage. Additionally, the Exchange has not to date provided any identifying information (such as SSN) to the employer to be able to defend any such notice. The regulations should require the Exchange to identify the employee by name, DOB and SSN so that the employer can determine if the individual is even an employee of the employer. Finally, the notices should have to be sent to the employer's legal address or to its resident agent as identified with the Maryland Department of Assessments & Taxation. | The proposed text follows 45 CFR 155.310(h) as amended in 81 FR 12341 (the HHS requirement on notification of employers). MHBE shall follow the verification requirements at 45 CFR 155.320(b) and will include these requirements in proposed regulations at a later date.<br><br>Based on the request of employers and other stakeholders, the Exchange will include the same information that the FFM has indicated that it will provide in this notice, which includes: the employee's name, DOB, last four digits of SSN if available and Exchange ID.<br><br>The Exchange uses the employer information provided by the employee for the employer's address and is not required to provide information to a legal address. |
| MIA, Carefirst | **14.35.07.04(C)** (Service area) **-** "Service area" should be defined. Clarification required to address whether rule applies to SHOP. | "Service area" under .04(A)(2) is addressed in .06F. References to the Individual Exchange added to the chapter title and scope for clarification. The SHOP Exchange will be addressed in a different chapter. |
| Carefirst | **COMAR 14.35.07.04(D)** (Incomplete application) - Does not specify if notice sent to applicant and Exchange pends the application or if the Exchange forwards the application to the carrier as an active enrollment as a self-attestation. | MHBE may not provide an eligibility determination for an incomplete application under 45 CFR 155.310(k). An individual will not be able to submit an incomplete application online and will not able to plan shop if an incomplete application is provided by mail. Therefore, the carrier will not receive an enrollment based on an incomplete application.<br><br>Edits incorporated to clarify this requirement. |
| MIA, Carefirst | **14.35.07.04(F)** (Electronic notice election) **-** Clarification required for who can elect to receive notice electronically (Who is the applicant?) and how the individual confirms the election by mail. | Definition of applicant added to include individuals only, not the employer as the employer does not provide information to the Exchange. Edit incorporated to clarify that the mailed notice is confirmation of the consumer's election to receive notices electronically and requires no |

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| | | further action by the individual (see 45 CFR 155.230(d)(1) and 42 CFR 435.918). |
| Carefirst | **COMAR 14.35.07.06(A)(2)(b)** (Minor residency) - References the parent or "caretaker" with whom the individual resides. It is unclear if "caretaker" is intended to mean a "caretaker relative" as that term is used to determine medical assistance eligibility (e.g., see MD. CODE REGS. 10.09.24.02), or if "caretaker" could be construed more broadly here. For consistency, CareFirst recommends the Exchange apply the existing "caretaker relative" definition. | Mirrors 45 CFR 155.305(a)(3)(ii)(B). Included internal cross-references to (A)(1) for additional clarification. |
| MIA | **14.35.07.06(D)** (Exchange service areas) **-** Under what circumstances would there be more than one Exchange in Maryland? | The area may be larger, for instance if Maryland participated in a multi-state Exchange. |
| Carefirst | **COMAR 14.35.07.06(E)** (Residency requirement) **-** Should define "temporary absence" to include a more definitive timeframe. | Mirrors 45 CFR 155.305(a)(3)(v). State case law is available on residency requirements for other programs. |
| Carefirst | **COMAR 14.35.07.07(B)** (APTC/CSR eligibility) - Does not include that individual isn't eligible for APTC/CSR if in catastrophic plan. A qualified individual or dependent who is enrolled in an employer-sponsored plan that does not meet minimum essential coverage requirements is *not* required to terminate that plan in order to become eligible for APTC. | MEC is defined in 14.35.01.02 as the IRS MEC definition at 26 USC 5000(f) and 26 CFR 1.5000A-2(c), which includes "Coverage under a health plan offered in the individual market within a State". (B) pertaining to ESI is specifically included to clarify that enrollment in an employer plan that is not affordable or meet the MV requirements is still considered MEC for purposes of APTC/CSR eligibility alone (26 CFR 1.36B-2(c)(3)(vii)(A). |
| Carefirst | **COMAR 14.35.07.07(J)** (APTC effective date for changes in household) - Appears to be misplaced in this section, as do (4) and (5). This section also does not address all qualifying event SEP effective dates. | Provisions included in this regulation because they pertain to an individual's eligibility for APTC. Rule added to capture non-SEP effective dates as well. |
| Carefirst | **COMAR 14.35.07.07(J)** (Enrollment dates) - Does not clearly define the effective dates as it provides that the date is (1) and (2) or (3), (4), or (5). | Edits incorporated to remove incorrect use of and/or. |
| MIA | **14.35.07.10** (Enrollment dates) **-** Enrollment dates only pertain to Individual Exchange not SHOP. | Edits incorporated in title and scope to specify that Chapter 7 only refers to the Individual Exchange. A separate chapter will address SHOP eligibility, including SEPs. |

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| Carefirst, HEAU | **14.35.07.10(A)** (Enrollment transaction) - provides that a qualified individual may enroll in a QHP, APTC, cost sharing reductions or catastrophic plan. This language is confusing as APTC is neither a QHP nor catastrophic plan but rather a means for paying for a QHP. | Edits incorporated to clarify enrollment in a QHP, insurance affordability program except for Medicaid (which includes a QHP with APTC/CSR), or catastrophic coverage. |
| Carefirst, MIA | **14.35.07.10(D)** (Enrollment transaction steps) - Clarification needed for requirement steps. | Edits for clarification incorporated. |
| Carefirst | **14.35.07.10(D)(3)(a)** (Enrollment transaction steps) - The Exchange does not notify carriers but rather transmits information to a carrier through an 834. This language should be modified to more precisely reflect the operational requirements of enrollment. | Edits for clarification incorporated, specified "notify" changed to "transmit...to the carrier". Additional transmittal requirements, such as the 834 process, is captured in MHBE-carrier operational instructions and are not appropriate for a regulation. |
| HEAU, Carefirst | **14.35.07.10(D)(3)(b)** (Timing of Exchange providing information to carrier) **-** Set Exchange time standard (Carefirst). Add "Promptly and without undue delay" per federal regulations (HEAU). | Edit incorporated to mirror federal language under 45 CFR 155.400(b)(1). |
| Carefirst | **14.35.07.10(D)(3)(b)(ii)** (Cost-sharing reduction plan variation) - Provides that the Exchange will identify an applicant's "cost-share reduction eligibility category". There are no categories of cost-share reductions. This language needs to be modified to be more precise. | Edits incorporated clarifying that the QHP may include a CSR variation of the plan (CSR plans are defined in .02B(3)-(5) and additional definitions of cost-sharing reduction and metal level plan variations added to COMAR 14.35.01.02). |
| Carefirst | **14.35.07.10(E)** (Premium payment) - States that an individual must only make a binder payment to effectuate coverage when the individual has elected a new plan after a break in coverage AND the individual has enrollment for the first time in a plan in the Exchange. The "and" should be an "or". | Edit incorporated. |
| Carefirst | **14.35.07.10(E)** (Premium payment)- Do not provide that an individual must also pay a binder payment if the individual selects a new plan with a different legal entity of the same carrier. | Edit incorporated in new proposed .10E(2) as: *A new QHP or catastrophic plan includes a QHP or catastrophic plan offered by a different carrier of the same holding company.* |
| Carefirst | **14.35.07.10(E)** - Finally, the requirements to accept a binder payment are identified in federal regulation. The draft regulations, however, do not mirror the language of existing federal law but only summarize or paraphrase it. This is likely to cause unnecessary conflicting application of the governing laws and significant confusion for all stakeholders. See 45 CFR §155.400. | 45 CFR 155.400(e) pertaining to binder payments allows the Exchange to set a policy about binder payments but does not specify provisions that must be followed by SBMs, only the FFM. Based on stakeholder and consumer feedback, MHBE has incorporated the FFM deadlines for premium payments into this version of the chapter at .10E. Additionally, MHBE has proposed a uniform date for payments starting in 2018 to |

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| | | reduce consumer confusion, particularly in instances of retroactive coverage where multiple months may be due, and streamline the standard across the Exchange. |
| Carefirst | **14.35.07.10(F)** requires the Exchange to maintain records of all enrollments through the Exchange, but does not make clear if this includes reinstatements. | MHBE must maintain records of all enrollments in QHP issuers through the Exchange under 45 CFR 155.400(c). "All enrollments" in (F) includes reinstatements. If the carrier has previously sent MHBE a termination 834 due to non-payment and then determines the consumer is eligible for reinstatement, the carrier would require an add 834 from MHBE. The carrier must notify MHBE of the respective QHP households that are eligible for reinstatement. This information is included in the operational guides provided to carriers. |
| MIA | **14.35.07.11(A)(1)** (Loss of MEC SEP)- This item is incomplete because it does not include an option for an SEP if an individual loses individual health insurance coverage. The current item is limited solely to the loss of employer-sponsored coverage. | An individual plan that ends (even if renewable) is included in .11B(4). |
| MIA | **14.35.07.11(A)(2)** refers to COBRA continuation coverage. Consider expanding this to include continuation coverage under State law. | Suggestion incorporated. |
| HEAU | **14.35.07.11(B)(2)** (Loss of MEC doesn't apply to individuals terminated for ineligibility due to citizenship/lawful presence verification issue) - Where is requirement located in federal law? | An individual who is terminated for failure to to meet the eligibility requirements under .04A(1) and 45 CFR 155.315(f) is not eligible for an SEP unless the individual qualifies for another SEP such as change in lawful presence status. MHBE believes this requirement is implied in the eligibility requirements but has specified this provision based on CMS guidance about SEP documentation and enforcement (https://blog.cms.gov/2016/01/19/clarifying-eliminating-and-enforcing-special-enrollment-periods/). |
| MIA | **14.35.07.11(C)** (Loss of MEC SEP)- Trigger event defined as "loses eligibility for minimum essential coverage" under the previous plan. However, for the situation described in §A(3) (coverage under a non-calendar year plan), the date should be defined as the end of the policy or plan year because it includes an off-Exchange plan even if the individual can renew. Refer to 45 CFR §155.420(d)(1)(ii). | Example about non-calendar year plans is incorporated in .11A(4). Clarification edit incorporated to explain that "the policy or plan year ends in the middle of the calendar year." |

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| MIA | **14.35.07.11(E)(1) and (2)** (Loss of MEC SEP) **-** Effective dates must be consistent with 45 CFR §155.420(b)(2)(iv). If the plan selection is made after the date of the triggering event, the federal regulations specify that the effective date is not until the first day of the second following month, if the plan selection is received between the 16th and the last day of any month. | .11E(1) mirrors the federal requirement of an effective date on the 1st of the month after the loss of MEC or the coverage ends if the plan selection is made before the loss or the coverage ends (45 CFR 155.420(b)(2)(iv)). In addition, MHBE proposes to allow for an effective date of the 1st of the month after the plan selection if the selection is made after the loss of MEC or the coverage ends as permitted in 45 CFR 155.420(b)(2)(iv) as well. This follows current Exchange operational rules as well. |
| MIA, HEAU | **14.35.07.11(F)** (Loss of MEC SEP - one time during calendar year for medically needy) **-** We believe §F was intended to refer to the special enrollment period for loss of medically needy coverage, as described in §A(5) of the regulation. | Edit incorporated, rule aligns to medically needy SEP now. |
| MIA | **14.35.07.12(E)(1)** (SEP for marriage and divorce) **-** Is "formation of civil partnerships" to be included as SEP? Also, under 45 CFR §155.420(b), the effective date for the special enrollment period due to divorce is governed by the standard effective date provision under 45 CFR §155.420 (b)(1), rather than the special effective date provision under 45 CFR §155.420(b)(2)(ii). | Civil partnerships removed based on definition of marriage from CMS/IRS: https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/marketplace-guidance-on-irs-2013-17.pdf and https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/frequently-asked-questions-on-coverage-of-same-sex-spouses.pdf.<br><br>.12(E)(4) added to include effective dates under (b)(1) for divorce. |
| HEAU | **14.35.07.13(A)(2)** (SEP for misconduct of non-Exchange entity) **-** Add definition of "misconduct" and federal language on NEE. | "Misconduct" and non-Exchange entity reference added to .13 and 45 CFR 155.420(d)(4) definition of misconduct added to .13(B). |
| MIA, HEAU, Carefirst | **14.35.07.13-.15** (Notification length and avenues for individual to alert exchange of error) - Provide for additional notification length. How will length be calculated? Where can notice be provided? The 2017 Notice of Benefit and Payment Parameters at 155.430(b)(1)(iv) allows 60 days after discovery. Maryland should provide at least 60 days. notification to the Exchange should mean the Exchange or any of its agents (navigators, DSS, brokers, etc.). Ten days is an unfair time limitation. | Time amended to allow for: 1) notification of 30 days and 2) SEP of 30 days for a total of 60 days. Notification to a consumer assistance worker of the Exchange - navigator, authorized broker or call center representative - added. Notification modes to the Exchange that mirror application avenues (ie mail, phone, online) added as well. As the Exchange determines SEP eligiblity, an individual must notify the Exchange of the request for an SEP. However, a previous action by MIA may be the basis for an SEP.<br><br>Retro termination amendment added to proposed COMAR 14.35.14(45 CFR 155.430(b) amendments are to terminations not SEPs). |

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| HEAU, Carefirst | **14.35.07.13-.15** (Effective date) **-** Could include retrospective and prospective (HEAU). The regulation does not provide that the Exchange has any responsibility to inform a member retroactively enrolled that they are responsible for all premiums past and present before being effectuated. This lack of Exchange responsibility is likely to cause significant consumer confusion. (Carefirst) | Prospective added to rule to clarify that date may be retrospective or prospective depending on the circumstances.<br><br>Exchange consumer assistance workers are already trained to assist the individual in making decisions about their eligibility and enrollment options. MHBE proposes to amend Navigator training standards under COMAR 14.35.02 to cover the additional information suggested in this comment. |
| MIA | **14.35.07.14(A)** (SEP that may involve MIA) - Explain what "collaboration and coordination" means in further detail. In a Complaint investigation, the Administration may issue an order finding a violation, may find no violation and allow the complainant the right to a hearing, or may close the case without a finding because the carrier has changed its position. If an order is issued, the carrier has the right to request a hearing. Does the Exchange anticipate conducting an additional investigation, or being notified of the Administration's investigation? Has the Exchange contemplated whether an order would need to be issued by the Administration to allow the SEP? | "Collaboration and coordination" is intended to encompass any process that MIA or the Exchange believes is required to investigate and make a decision regarding a case. The Exchange may be able to determine eligibility for an SEP even if the MIA must take additional investigation, hearing or other steps to fully address a case under MIA's duties. For example, if an investigation reveals that a broker provided fraudulent information to an individual that prevented the individual from enrolling in a QHP, the Exchange may have enough information to determine the individual's SEP eligibility. However, the MIA may need to take further steps to address ramifications of this action on the broker's license (and the Exchange separately may take steps to address ramifications of this action on the broker's Exchange certification). |
| MIA | **14.35.07.14(B)** (Notification length to MIA) - There are no statutory limits on when a person may file a complaint against a producer. The Administration may issue an order against a producer, but it is likely to take some time for the investigation to be completed. | The Exchange may be able to determine eligibility for an SEP even if the MIA must take additional investigation, hearing or other steps to fully address a case under MIA's duties. For example, if an investigation reveals that a broker provided fraudulent information to an individual that prevented the individual from enrolling in a QHP, the Exchange may have enough information to determine the individual's SEP eligibility. However, the MIA may need to take further steps to address ramifications of this action on the broker's license (and the Exchange separately may take steps to address ramifications of this action on the broker's Exchange certification). |
| HEAU | **14.35.07.15** (Exchange determination of exceptional circ. SEP) **-** "In its sole discretion" suggests that consumers have no appeal rights. | Edits incorporated to delete "sole discretion". Determinations by MHBE for SEP eligibility may be appealed. |

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| MIA | **14.35.07.16(D)** (Move SEP) **-** Under 45 CFR §155.420 (b)(2)(iv), the calculation of the effective date is the same for triggering events that occur prior to January 1, 2017, and those that occur on or after that date. The proposed regulation should track the language of the federal regulation. | After 1/1/17, or earlier at the Exchange's option (which MHBE has not proposed), an individual must be allowed to select a plan up to 60 days prior to the move under 45 CFR 155.420(c)(2). MHBE has not elected this option and therefore the only effective date available prior to 1/1/17 under 45 CFR 155.420(b)(2)(iv) is to follow the 15th day of the month rule. However, the (b)(2)(iv) does not address effective dates for selections made on the date of the move if the Exchange does not select the 60 day before option prior to 1/1/17 under 45 CFR 155.420(c)(2). MHBE believes that the effective date on the 1st of the month does not apply until 1/1/17. |