# Title 14
# INDEPENDENT AGENCIES
## Subtitle 35 MARYLAND HEALTH BENEFIT EXCHANGE
### *14.35.15 Carrier Certification Standards*

*Authority: Insurance Article §§31-108, 31-115, and 31-116, Annotated Code of Maryland*

**Notice of Proposed Action**

[18-304-P]

The Maryland Health Benefit Exchange proposes to adopt new Regulations **.01— .11** under a new chapter, **COMAR 14.35.15 Carrier Certification Standards**.

**Statement of Purpose**

The purpose of this action is to set forth the standards a carrier shall meet to be certified as a carrier authorized to participate on the Maryland Health Benefit Exchange under Insurance Article, §31-115(b)(5), Annotated Code of Maryland, in the Individual and SHOP Exchanges.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Jessica Grau, Health Policy Analyst, Maryland Health Benefit Exchange, 750 East Pratt Street, Baltimore, MD 21202, or call 410-547-6888, or email to mhbe.publiccomments@maryland.gov, or fax to 410-547-7373. Comments will be accepted through December 10, 2018. A public hearing has not been scheduled.

***.01 Scope.***

*This chapter describes the standards a carrier shall meet to be certified as a carrier authorized to participate on the Maryland Health Benefit Exchange under Insurance Article, §31-115(b)(5), Annotated Code of Maryland, in the*

*Individual and SHOP Exchanges. This chapter does not apply to certification of Individual or SHOP Exchange qualified plans.*

***.02 Definitions.***

*A. In this chapter, the following terms have the meanings indicated.*

*B. Terms Defined.*

*(1) "Active carrier business agreement" means the most recent version of the carrier business agreement provided by the Exchange, signed by the Exchange and the carrier, and on file with the Exchange.*

*(2) "Active non-exchange entity agreement" means the most recent version of the non-exchange entity agreement provided by the Exchange, signed by the Exchange and the carrier, and on file with the Exchange.*

*(3) "Authorized carrier" means a carrier that holds a current certification of authorization issued by the Exchange as set forth in Regulation .03 of this chapter.*

*(4) "Carrier business agreement" means the agreement between the Exchange and the carrier that contains terms and conditions governing compliance with the Annotated Code of Maryland, Exchange policies, and State and federal regulations.*

*(5) "Carrier reference manual" means the document developed by the Exchange that provides business rules and operational instructions to authorized carriers participating on the Exchange.*

*(6) "Health maintenance organization (HMO)" has the meaning stated in Health-General Article, §19-701(g), Annotated Code of Maryland.*

*(7) "Member" means a qualified individual or qualified employee enrolled in a QHP with a particular authorized carrier through the Exchange.*

*(8) Member Level Report.*

*(a) "Member level report" means a report of the carrier's QHP member enrollment files with the Exchange at a specified time.*

*(b) "Member level report" includes:*

*(i) Information demonstrating the member enrolled through the Exchange;*

*(ii) The coverage effective date;*

*(iii) The coverage termination date, if applicable;*

*(iv) The termination reason, if applicable;*

*(v) The premium amount; and*

*(vi) The amount of advanced premium tax credits, if applicable.*

*(9) "Metal level" means a QHP at the bronze, silver, gold, or platinum coverage level.*

*(10) "Non-exchange entity agreement" means the agreement between the Exchange and the carrier that contains privacy and security provisions.*

*(11) "SERFF binder" means the portfolio of information that State laws and regulations require carriers to submit to the Exchange through SERFF.*

*(12) "System companion guide" means the document developed by the Exchange that provides instructions to authorized carriers to process enrollment information through electronic data transactions between the Exchange and the carrier.*

*(13) "System for Electronic Rate and Form Filing (SERFF)" means the online system the Exchange and the Administration use to accept, review, and approve carrier product and rate filings.*

***.03 Carrier Conditions for Participation and Certification—Generally.***

*A. In order to participate in the Exchanges, carriers must hold a current certificate of authorization issued by the Exchange.*

*B. To receive a certificate of authorization from the Exchange, carriers shall:*

*(1) Possess a certificate of authority to:*

*(a) Act as an insurer and engage in the business of health insurance under Insurance Article, Title 4, Subtitle 1, Annotated Code of Maryland;*

*(b) Operate a health maintenance organization under Health-General Article, §19-707, Annotated Code of Maryland;*

*(c) Operate as a dental plan organization under Insurance Article, Title 14, Subtitle 4, Annotated Code of Maryland; or*

*(d) Operate as a nonprofit health service plan under Insurance Article, Title 14, Subtitle 108, Annotated Code of Maryland;*

*(2) If offering health plans, demonstrate evidence that the carrier:*

*(a) Is accredited by the National Committee for Quality Assurance (NCQA) or the Utilization Review Accreditation Commission (URAC); and*

*(b) Meets data sharing requirements with the Exchange under the federal accreditation standard at 45 CFR §156.275(c)(5);*

*(3) Have a current active carrier business agreement in place, in the form designated by the Exchange;*

*(4) Have a current active non-Exchange entity agreement in place, in the form designated by the Exchange; and*

*(5) By submitting its application, agree that it will:*

*(a) Retain records related to participation in the Exchange for a period of 10 years after participation in the Exchange has ceased; and*

*(b) Allow reasonable inspection by the Exchange and, to the extent required by law, other governmental entities including HHS.*

*C. The carrier shall remain an authorized carrier until:*

*(1) The certificate of authorization expires;*

*(2) The Exchange suspends or revokes the authorized carrier's certification;*

*(3) The authorized carrier discontinues offering health benefit plans in the Exchange under Insurance Article, §§15-1212 and 15-1409, Annotated Code of Maryland; or*

*(4) The authorized carrier loses its certificate of authority to act as an insurer in the State of Maryland.*

*D. When an authorized carrier that offers one or more qualified plans in the Exchange merges into or is acquired by another entity and the merger or acquisition is approved by the Commissioner, the authorized carrier shall:*

*(1) Notify the Exchange of the change in a manner to be specified by the Exchange;*

*(2) Provide the legal name and Taxpayer Identification Number of the new entity and the effective date of the change at least 30 days prior to the effective date of the merger or acquisition;*

*(3) Be deemed to adhere to the requirements of this chapter for the remainder of the affected benefit year; and*

*(4) Complete any required modifications to interfaces with the Exchange without undue delay such that operations with the Exchange are not affected or interrupted.*

***.04 Application for Authorization.***

*A. Carriers shall submit an application to the Exchange each year, in the form specified by the Exchange, no later than the first business day of July of the year before the certification is effective.*

*B. An application will not be deemed complete until a carrier submits all of the required application elements under §A of this regulation.*

*C. The Exchange, within 45 days of receipt of a completed application, shall notify a carrier of the decision to approve or deny the application.*

*D. If the Exchange does not provide a carrier notice of a decision to approve or deny a carrier's application within 45 days of application submission, then the carrier may appeal to MHBE Board of Trustees through a written letter to request an expedited decision within 14 days of the appeal.*

*E. An application subject to an expedited decision under §D of this regulation shall be deemed denied by the Exchange if the appeal is not ruled upon by the Board within 14 days.*

***.05 Conditions for Participation—Authorized Carrier Conduct.***

*A. An authorized carrier may not discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation in the administration of a qualified plan.*

*B. An authorized carrier shall offer insurance producer compensation for qualified plans offered through the Exchange equal to insurance producer compensation for qualified plans offered outside of the Exchange.*

*C. An authorized carrier shall comply with any applicable State laws and regulations regarding marketing by carriers, including:*

*(1) Any fair marketing standards developed jointly by the Exchange and the Commissioner under Insurance Article, §31-115(k)(2)(x), Annotated Code of Maryland;*

*(2) Insurance Article, §§27-202 — 27-205, Annotated Code of Maryland, for insurers, nonprofit health service plans, and dental plan organizations; and*

*(3) Health-General Article, §19-729, Annotated Code of Maryland, for health maintenance organizations.*

*D. An authorized carrier and its officials, employees, agents, and representatives:*

*(1) Shall comply with any applicable State laws and regulations regarding marketing by carriers; and*

*(2) May not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in qualified plans.*

*E. An authorized carrier shall allow all qualified individuals and qualified employees to enroll in qualified health plans during open enrollment periods designated by the Exchange for the Individual Exchange or the employer for the SHOP Exchange.*

*F. An authorized carrier shall allow qualified individuals and qualified employees determined eligible for special enrollment periods by the Exchange to enroll in qualified health plans outside the open enrollment periods.*

*G. An authorized carrier shall implement the effective dates of coverage for the Individual Exchange established by the Exchange in accordance with COMAR 14.35.07 and COMAR 14.35.14.14 as specified in enrollment information received from the Exchange.*

*H. An authorized carrier shall terminate an enrollee's coverage in the Individual Exchange only in those circumstances permitted by COMAR 14.35.14.*

*I. An authorized carrier shall process and acknowledge enrollment and eligibility information transmitted from the Exchange in accordance with Exchange standards detailed in the System Companion Guide.*

*J. An authorized carrier shall reconcile enrollment and eligibility information with the Exchange no less than once a month and upon request of the Exchange in a form and manner designated by the Exchange and detailed in the system companion guide.*

*K. An authorized carrier shall provide a member level report to the Exchange no less than once per month, upon request of the Exchange, and in a form and manner designated by the Exchange and detailed in the system companion guide.*

*L. An authorized carrier shall notify the Exchange 60 days in advance of a carrier system or data change that may affect the transmission or receipt of data from the Exchange to the carrier.*

*M. If an applicant initiates enrollment directly with the authorized carrier for enrollment through the Individual Exchange, the authorized carrier shall direct the individual to file an application through the Individual Exchange.*

*N. An authorized carrier shall accept and process an enrollment for a qualified individual or qualified employee that does not include a Social Security number.*

***.06 Conditions for Participation—Individual Exchange Premium Payment.***

*A. An authorized carrier shall follow the premium payment procedures and deadlines under COMAR 14.35.07.11F.*

*B. An authorized carrier may establish a premium payment threshold policy under COMAR 14.35.07.11G.*

*C. An authorized carrier may not use a payment made to effectuate coverage under COMAR 14.35.07.11F(1) to pay outstanding balances attributed to previously terminated coverage of the qualified individual.*

*D. An authorized carrier in the Individual Exchange shall calculate that the premium for coverage lasting less than 1 month equals the product of:*

*(1) The premium for 1 month of coverage divided by the number of days in the month; and*

*(2) The number of days for which coverage is being provided in the month.*

*E. An authorized carrier shall accept premium and cost-sharing payments from the following third-party entities:*

*(1) Ryan White HIV/AIDS Program under Title XXVI of the Public Health Service Act;*

*(2) Indian tribes, tribal organizations, or urban Indian organizations; and*

*(3) State and federal government programs.*

*F. Establishment of Standard Policies for Termination of QHPs Due to Non-payment of Premiums.*

*(1) An authorized carrier shall establish a standard policy for termination of enrollment of enrollees through the Exchange due to non-payment of premiums under COMAR 14.35.14.06B.*

*(2) The authorized carrier's standard policy shall:*

*(a) Include the grace period for enrollees receiving Advanced Premium Tax Credits set forth in Insurance Article, §15-1315(c)—(e), Annotated Code of Maryland;*

*(b) Include the grace period for enrollees not receiving an Advanced Premium Tax Credit set forth in Insurance Article, §15-209, Annotated Code of Maryland, COMAR 31.10.25.04C, and COMAR 31.12.07.05D;*

*(c) Be applied uniformly to enrollees in similar circumstances;*

*(d) Specify whether the authorized carrier has a premium payment threshold policy under COMAR 14.35.07.11F; and*

*(e) If the carrier has a premium payment threshold policy, specify the authorized carrier's premium payment threshold policy.*

*G. Location of Premium Payment Information.*

*(1) An authorized carrier shall make information available to enrollees through an Internet link that is displayed prominently in the enrollee's authorized carrier's monthly premium payment billing notice.*

*(2) This information shall be available on:*

*(a) The authorized carrier's enrollee website;*

*(b) The authorized carrier's enrollee Internet portal; and*

*(c) Upon request by an enrollee.*

***.07 Conditions for Participation—Individual Exchange Carrier Notice Requirements.***

*A. An authorized carrier shall provide enrollees newly effectuating coverage an enrollment information package that is written in plain language and in a manner that is accessible to individuals living with disabilities and individuals who have limited English proficiency.*

*B. If an enrollee is delinquent on premium payment, the carrier shall provide the enrollee with notice of such payment delinquency.*

*C. If an authorized carrier terminates an enrollee's coverage or enrollment in a qualified plan through the Exchange in accordance with COMAR 14.35.14 and 45 CFR §155.430(b)(2)(i), (ii), or (iii), the authorized carrier shall, promptly and without undue delay provide the enrollee with a notice of termination that includes:*

*(1) The termination effective date; and*

*(2) The reason for termination.*

*D. An authorized carrier shall follow all other carrier notice requirements under Insurance Article, Titles 15 and 31, Annotated Code of Maryland, pertaining to the individual and small group Exchanges, and 45 CFR Parts 147, 154, 155, and 156.*

***.08 Requirements for Qualified Plans.***

*A. The authorized carrier shall offer in the Exchange only plans that the Exchange certifies as qualified plans under COMAR 14.35.16.*

*B. The authorized carrier shall ensure that each of its plans comply with the plan certification requirements in COMAR 14.35.16 on an ongoing basis.*

*C. An authorized carrier shall offer no more than four benefit designs per metal level in the Individual Exchange and four benefit designs per metal level in the SHOP Exchange.*

*D. An authorized carrier offering stand-alone dental plans shall offer no more than one benefit design at the same actuarial value per network type.*

*E. As set forth in Insurance Article, §31-115(b)(5), Annotated Code of Maryland, the authorized carrier:*

*(1) Shall offer in each Exchange, the Individual and the SHOP, in which the authorized carrier participates, at least one qualified health plan:*

*(a) At a bronze coverage level;*

*(b) At a silver coverage level; and*

*(c) At a gold coverage level;*

*(2) If the authorized carrier participates in the Individual Exchange and offers any health benefit plan in the individual market outside the Exchange, shall offer at least one qualified health plan at the silver level and one at the gold level in the individual market outside the Exchange;*

*(3) Shall charge the same premium rate for the same qualified health plan regardless of whether the qualified health plan is offered through the Exchange, through an insurance producer outside the Exchange, or directly from a carrier;*

*(4) May not vary rates for a SHOP qualified employer during the employer's plan year; and*

*(5) Shall comply with the prohibition on cancellation fees and penalties for termination of coverage, as set forth in the Insurance Article, §31-108(d), Annotated Code of Maryland.*

***.09 Network Adequacy.***

*For each qualified plan that the authorized carrier seeks to offer for sale through the Individual Exchange or the SHOP Exchange, the authorized carrier shall:*

*A. Follow the Maryland Insurance Administration network adequacy and network reporting regulations set forth under COMAR 31.10.44 or COMAR 31.10.45;*

*B. Complete an attestation in the carrier application under Regulation .04 of this chapter indicating carrier compliance with COMAR 31.10.44 or COMAR 31.10.45; and*

*C. Submit a document providing consumers with information on the carrier's network that is suitable for publishing in qualified plan shopping in the Individual Exchange in a form and manner detailed by the Individual Exchange.*

***.10 Waiver Authority.***

*A. The Exchange, with the approval of the Exchange Board of Trustees, and for reasons solely within the discretion of the Exchange, may grant a waiver to a specific provision of the application for certification, with or without conditions.*

*B. A waiver may only be granted to the extent it does not conflict with the provisions of Insurance Article, Annotated Code of Maryland, or applicable federal and State law.*

*C. A carrier may submit a request for a waiver on a form developed by the Exchange.*

*D. Carriers who are newly seeking accreditation from outside entities and have not yet received such accreditation by the Exchange's application deadline should use the waiver process to seek waiver or modification of this condition.*

*E. The request shall state:*

*(1) The provision from which a waiver is sought;*

*(2) The reason the carrier is unable to comply with the provision; and*

*(3) The reason that compliance with the provision will impose a substantial hardship.*

*F. The Exchange may grant a waiver if:*

*(1) The Exchange determines that compliance with the provision from which the waiver is sought cannot be accomplished without substantial hardship;*

*(2) The waiver will not conflict with applicable State and federal law; and*

*(3) The waiver is in the best interests of the State.*

*G. Final Written Decisions on Requests for Waivers.*

*(1) The Exchange shall issue a final written decision on a request for a waiver that is submitted under §A of this regulation within 45 days from receipt of the request and all supporting information for the waiver by the Exchange.*

*(2) If the Exchange grants a waiver, the decision shall include:*

*(a) The duration of the waiver; and*

*(b) Any conditions imposed by the Exchange.*

*(3) A request for a waiver may be denied if:*

*(a) The Exchange determines that the conditions of §D of this regulation are not satisfied;*

*(b) A waiver is not in the best interests of the State; or*

*(c) The waiver will conflict with applicable State or federal laws.*

*(4) A denial may not be appealed.*

*(5) The Exchange shall notify the carrier of the decision by mail or electronically.*

*H. The Exchange may revoke a waiver if it appears that the reasons for granting the waiver have ceased to exist.*

*I. The Exchange's decision and the request for waiver shall be subject to public disclosure.*

***.11 Authorization Renewals.***

*A. The Exchange shall review the performance of authorized carriers on an annual basis.*

*B. Authorized carriers shall submit information in a form and manner required by the Exchange about Exchange-specific complaints and grievances, upon request.*

MICHELE S. EBERLE
Executive Director