



Regulations:
Chapter 7
And Corresponding Definitions

June 20, 2016

Regulations Drafting and Stakeholder Process Overview

Stakeholder Process Timeline

- March:
 - Shared drafts with Board, MIA, HEAU and DHMH
 - MHBE incorporated comments into drafts
- April:
 - Shared drafts with SAC and discussed at 4/14 meeting
 - MHBE incorporated comments into drafts
 - Drafts posted for written comment until April 27
 - MHBE incorporated comments into drafts prior to May meetings
- May:
 - MHBE hosted public meeting on May 12 about Chapter 7
 - Additional written comments accepted until May 23
- June: Request to proceed with Committee, Maryland Register requirements

Key Areas of Comments Received

Overview of Comments/Responses

- Proposals incorporate federal requirements with staff recommendations based on broad, diverse stakeholder feedback
 - Goal for consensus approach built on Exchange experience to date
- General Comments and Definitions: 51 total comments; 37 accepted
- Chapter 7: 90 comments total; 40 accepted; 9 partially accepted; 5 clarifications (responses to questions)
 - Provided a written response for each comment received
 - Accepted comments received, except if did not:
 - Meet APA or other style requirements; or
 - Adhere to federal requirements, state requirements or staff's final recommended approach to issue
- Staff collaborated with partner agencies to ensure proposals align with current process and/or understanding of requirement
 - For example, included delayed effective dates for 2018 if provision not captured in 2017 QHP forms

- MHBE staff provided a memo to Board and stakeholders regarding issue in early May
 - Federal rules are drafted to direct Exchange action and require that Exchange establish rules in order to regulate third parties
 - MHBE is subject to the APA
 - Incorporating text of federal rule in lieu of cross-reference reduces confusion for third-party because:
 - 1) Federal rules already include cross-references
 - 2) Federal rules require Exchange to establish standards and processes and CMS provides options within a single provision
- To the extent possible, MHBE has tracked federal text and used cross-references
- MHBE has added Scope provision to clarify that MHBE regulations do not supersede federal requirement

Cross-References Confusing and Unclear to Consumer; Follow Medicaid Approach to Eligibility: “Lawfully Present”

- MHBE proposes in COMAR 14.35.07.06 to include full list of lawfully present categories (23 categories with additional subcategories)
- With federal cross-reference reader would need 4 steps at minimum:
 - 1) State rule (Proposed COMAR 14.35.07.06)
 - 2) Federal eligibility requirement (45 CFR 155.305(a)(1): “...Must be lawfully present...”)
 - 3) Definition of lawfully present in federal rule (45 CFR 155.20 with cross-reference to 152.2)
 - 4) Definition of lawfully present (45 CFR 152.2, which includes further cross-references and defined terms)
- Medicaid State Approach: Includes full list of eligible individuals in COMAR 10.09.24.05

Multiple Options within 1 Provision; Cross-Reference Won't Suffice: Effective Date for Birth/Adoption/Foster Care/Court Order SEP

- Federal rule provides for multiple effective date options all contained in the same provision (45 CFR 155.420(b)(1)):
 - Date of birth/adoption/foster care/court order; or
 - 1st of month after birth/adoption/foster care/court order

(2) Special effective dates. (i) In the case of birth, adoption, placement for adoption, or placement in foster care as described in paragraph (d)(2)(i) of this section, the Exchange must ensure that coverage is effective for a qualified individual or enrollee on the date of birth, adoption, placement for adoption, or placement in foster care, or it may permit the qualified individual or enrollee to elect a coverage effective date of the first of the month following the date of birth, adoption, placement for adoption, or placement in foster care, or in accordance with paragraph (b)(1) of this section. If the Exchange permits the qualified individual or enrollee to elect a coverage effective date of either the first of the month following the date of birth, adoption, placement for adoption or placement in foster care or in accordance with paragraph (b)(1) of this section, the Exchange must ensure coverage is effective on the date duly selected by the qualified individual or enrollee.

- MHBE proposed date under COMAR 14.35.07.13E(2)
 - Date of birth/adoption/foster care/court order

MHBE Must Follow APA Requirements; Federal Rules Regulate MHBE and MHBE Regulates Third Parties: Enrollment Processes

- Federal rule states that Exchange must establish processes by which:
 - 1) Carriers acknowledge receipt of enrollment information (45 CFR 155.400(b)(2)); and
 - 3) Carriers process electronic enrollment-related transactions (45 CFR 155.400(f)).
- Federal rule allows Exchange to establish premium due dates under 45 CFR 155.400(e)
- To provide notice to third parties (carriers and public) of the Exchange's processes under 45 CFR 155.400, MHBE proposes:
 - COMAR 14.35.07.11
 - Additional processing requirements captured in certification requirements

- Proposed 14.35.07.11E: To reduce consumer confusion and promote consistency across the Exchange, MHBE proposes due dates for 1st month's premium payment
 - CMS allows Exchange to set date within parameters (45 CFR 155.400(e))
 - For 2017:
 - Defer to carrier due date that must fall within CMS parameters
 - For 2018 on:
 - Payment is due by 7th of month
- Proposed 14.35.07.11F: Allow carrier to set premium payment threshold as allowed under CMS rule

Premium Payment: Proposed 14.35.07.11 – Comments/Responses

- Comments:
 - Both support and concern about specifying due date
 - Request from carriers to permit continued ability to set own dates based on business decision
 - Request from some advocates that more flexibility be provided in SEP retro situations
- Responses:
 - Uniform due date will reduce consumer confusion and allow MHBE staff to more proactively message to consumers
 - Proposed date falls within range of carriers' current due dates
 - Date balances allowing consumers additional time beyond 1st of month (min. fed requirement) but still ensuring that payment occurs early enough within month to access care and use benefits
 - Set consistent date for all types of transactions (new enrollments during OE/SEPs and retro SEPs) to reduce technical/operational burden
 - Carriers may still use payment “grace period” or “void period” for payment beyond due date as long as process is consistent for all consumers

- SEPS for Error, Misrepresentation, Inaction, or Misconduct; Contract Material Violation; Exceptional Circumstances
- CMS allows Exchange to specify length of SEP and set effective date
- For 2017:
 - SEP is 60 days from event
 - MHBE to select effective date based on event circumstances
 - Use cross-reference to mirror MIA approach to 2017 forms
- For 2018:
 - Consumer must notify w/in 30 days of event or should have known about event
 - SEP is 30 days once consumer eligibility for SEP determined
 - MHBE to select effective date based on event circumstances

SEPs: Proposed 14.35.07.14-.17 – Comments/Responses

- Comment: Carrier/MIA concern that initial proposal does not match form filings
- Response: Amended initial proposal to mirror current approach for 2017 and used future effective date for 30 day notice and SEP requirements
- Comments: Both concern and support for specifying different time periods than federal maximum SEP length (60 days)
 - Responses: Based on experience to date, recommend balancing consumer time to identify issue with ensuring that issue is timely addressed
 - Consumers typically select QHP quickly if eligible for SEP
 - Identified need to clarify notice time
 - Ensures consumers have time if issue isn't identified until after application/enrollment (i.e. in bill)
 - Protects consumer against significant coverage gaps
 - Helps carriers manage retroactive work in timely manner
- Comment: Concern about how SEP decision impacts MIA's process (i.e. fraud)
- Response: Added language to clarify that SEP decision may occur separate from MIA process

Questions and Comments?