

Title 14
INDEPENDENT AGENCIES
Subtitle 35 MARYLAND HEALTH BENEFIT EXCHANGE

Notice of Proposed Action

[21-128-P]

The Maryland Health Benefit Exchange proposes to:

- (1) Amend Regulation **.02** under **COMAR 14.35.07 Eligibility Standards for Enrollment in a Qualified Health Plan, Eligibility Standards for APTC and CSR, and Eligibility Standards for Enrollment in a Catastrophic Qualified Health Plan in the Individual Exchange;**
- (2) Amend Regulation **.01** under **COMAR 14.35.10 Appeals from Determinations Regarding Producer Authorization or Individual Exchange Navigator Certification;**
- (3) Amend Regulations **.01, .02, .09, and .12** under **COMAR 14.35.11 Fair Hearings of Individual Exchange Eligibility Determinations;** and
- (4) Adopt new Regulations **.01—.07** under a new chapter, **COMAR 14.35.19 State-Based Young Adult Health Insurance Subsidies Program.**

Statement of Purpose

The purpose of this action is to set forth the structure, implementation, and eligibility standards for the Young Adult Health Insurance Subsidies Program, as required under Insurance Article, §31-117, Annotated Code of Maryland, as well as alter existing regulations to accommodate the Young Adult Health Insurance Subsidies Program.

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 Becca Lane, Health Policy Analyst, Maryland Health Benefit Exchange, 750 E. Pratt Street, Baltimore, MD 21202, or call 410-547-7371, or email to

becca.lane@maryland.gov, or fax to 410-547-7373. Comments will be accepted through October 12, 2021. A public hearing has not been scheduled.

14.35.07 Eligibility Standards for Enrollment in a Qualified Health Plan, Eligibility Standards for APTC and CSR, and Eligibility Standards for Enrollment in a Catastrophic Qualified Health Plan in the Individual Exchange

Authority: Insurance Article, §31-106(c)(1)(iv), Annotated Code of Maryland

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.
 - (1)—(11) (text unchanged)
 - (12) “Insurance affordability program” means a program that is one of the following:
 - (a)—(b) (text unchanged)
 - (c) A program that makes available to qualified individuals coverage in a QHP through the Individual Exchange with APTC credit under §1.36B(2)(c) of the Internal Revenue Code; [and]
 - (d) A program that makes available coverage in a QHP through the Individual Exchange with CSR under §1402 of the ACA[.]; *and*
 - (e) *The State-Based Young Adult Health Insurance Subsidies Program established under Insurance Article, §31-122, Annotated Code of Maryland.*
 - (13)—(16) (text unchanged)

14.35.10 Appeals from Determinations Regarding Producer Authorization or Individual Exchange Navigator Certification

Authority: Insurance Article, §§31-106(c)(1)(iv), 31-112, and 31-113; State Government Article, Title 10, Subtitle 2; Annotated Code of Maryland

.01 Scope.

- A.—B. (text unchanged)
- C. Determinations entitled to contested case appeals. This chapter applies only to the appeal of an Exchange determination regarding:
 - (1)—(8) (text unchanged)
 - (9) Renewal of captive producer authorization; [or]
 - (10) Denial of Individual Exchange initial navigator certification[.]; *and*
 - (11) *The amount of State-based subsidy paid by the Exchange to carriers pursuant to COMAR 14.35.19.*

14.35.11 Fair Hearings of Individual Exchange Eligibility Determinations

Authority: Insurance Article, §§31-106(c)(1)(iv) and 31-108(b)(1), (10), and (17), Annotated Code of Maryland

.01 Scope.

This chapter applies to eligibility determinations and redeterminations for enrollment in qualified health plans, advance payments of the premium tax credit, [and] cost-sharing reductions, *and State-based subsidies* offered through the Individual Exchange, as well as for MAGI-based eligibility determinations and redeterminations for the Maryland State Medicaid program and the Maryland Children’s Health Insurance Program.

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.
 - (1)—(9) (text unchanged)
 - (10) “Insurance affordability program” means a program that is one of the following:
 - (a)—(c) (text unchanged)
 - (d) A program that makes available to eligible individuals coverage in a qualified health plan through the Maryland Health Benefit Exchange with advance payments of the premium tax credit established under §36B of the Internal Revenue Code; [or]
 - (e) A program that makes available to eligible individuals coverage in a qualified health plan through the Maryland Health Benefit Exchange with cost-sharing reductions established under §1402 of the Affordable Care Act[.]; *or*

(f) *The State-Based Young Adult Health Insurance Subsidies Program established under Insurance Article, §31-122, Annotated Code of Maryland.*

(11)—(15) (text unchanged)

.09 Findings, Timing of Decision, and Effect of Decision.

A.—B. (text unchanged)

C. Appeal Rights.

(1) (text unchanged)

(2) An administrative law judge’s decision:

(a) (text unchanged)

(b) Related to eligibility for enrollment in a qualified health plan, advance payments of the premium tax credit, [or] cost-sharing reductions, *or State-based subsidies* shall be implemented in accordance with 45 CFR §155.545(c)(1).

(3) (text unchanged)

D. (text unchanged)

.12 Eligibility for Enrollment in a Qualified Health Plan, for Advance Payments of Premium Tax Credit, [and] for Cost-Sharing Reductions, and for the State-Based Young Adult Health Insurance Subsidies Program Pending Appeal.

A. (text unchanged)

B. Eligibility for Advance Payments of the Premium Tax Credit, [and/or] Cost-Sharing Reduction, *and/or the State-Based Young Adult Health Insurance Subsidies Program.*

(1) Except where the applicant does not appeal an initial determination of eligibility within 90 days of such determination, an applicant who, upon initial determination, has been determined to be eligible to enroll in a qualified health plan may enroll in a qualified health plan within 90 days of the determination of eligibility for a qualified health plan notwithstanding ineligibility for or the amount of Advance Payments of the Premium Tax Credit [or], Cost-Sharing Reduction, *or State-based subsidy* for which the applicant was determined to be eligible.

(2) Pending the outcome of the appeal, the applicant under §B(1) of this regulation will receive only the amount of the advance payments of the premium tax credit [and/or], cost-sharing reduction, *and/or State-based subsidy* if any, for which applicant was determined to be eligible upon initial determination.

(3) (text unchanged)

14.35.19 State-Based Young Adult Health Insurance Subsidies Program

Authority: Insurance Article, §31-106(c)(1)(iv) Annotated Code of Maryland

.01 Scope.

This chapter sets forth the structure, implementation, and eligibility standards for the State-Based Young Adult Health Insurance Subsidies Program, as required under Insurance Article, §31-117 Annotated Code of Maryland.

.02 Definitions.

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

B. *Terms Defined.*

(1) “Enrollee” means a qualified individual who is enrolled in a qualified health plan through the Individual Exchange.

(2) “Essential health benefit” has the meaning set forth in Insurance Article, §31-116(a), Annotated Code of Maryland, and 42 U.S.C. §18022(b).

(3) “Federal poverty level (FPL)” means the most recently published federal poverty level guidelines, updated periodically in the Federal Register by the Secretary of HHS as set forth in 42 U.S.C. §9902(2), as of the first day of the open enrollment period for QHPs offered through the Individual Exchange for a calendar year.

(4) “Program” means the State-Based Young Adult Health Insurance Subsidies Program.

.03 Eligibility Requirements for Subsidies Through the Program.

A. *An enrollee is eligible to receive subsidies from the Program during a month if:*

(1) *The enrollee is a member of a tax filer’s tax household and the tax filer has met the eligibility requirements for APTC in accordance with the requirements in COMAR 14.35.07.08A—C, E, and G;*

(2) *The enrollee is a member of a tax filer’s tax household and the tax filer attests to a household income, as defined in 26 CFR §1.36B-1(e), greater than or equal to 138 percent but not more than 400 percent of the FPL for the benefit year for which coverage is requested;*

(3) *The enrollee is at least 18 years old; and*

(4) *The enrollee is under the age of 35 years.*

B. *Eligibility under this regulation is contingent upon verification of the enrollee’s attestation that the enrollee meets the criteria in §A of this regulation.*

C. *The enrollee’s age as of the effective date of coverage shall be used in determining the enrollee’s eligibility to receive subsidies from the Program.*

D. In calendar years 2022 and 2023:

- (1) The Board may limit the availability of subsidies, regardless of eligibility, if the costs of the program are projected to exceed the budgeted allowance for that calendar year;*
- (2) The limit described in §D(1) of this regulation may take the form of:*
 - (a) A limit on the number of enrollees eligible for the subsidy;*
 - (b) A limit on increases in subsidies during a plan year for enrollees after enrollment; or*
 - (c) Any other limit or combination of limits as the Board deems appropriate;*
- (4) Any limit on the availability of subsidies for enrollees in the program shall be applied uniformly to all enrollees after the effective date of the Board's decision; and*
- (5) The Exchange shall monitor the data outlined in Regulation .05 of this chapter to determine, in consultation with the Maryland Insurance Administration, the recommended limits to the Program.*

E. Effective Dates for Changes in Subsidy Eligibility.

- (1) Except as otherwise specified under this regulation, changes in eligibility for subsidies determined by the Individual Exchange are effective the first day of the month following the date on which the determination is made.*
- (2) When an applicant is determined newly eligible for Medicaid or MCHP, the applicant shall be ineligible for subsidies beginning the first of the month after the enrollee is determined newly eligible for Medicaid or MCHP.*
- (3) When an applicant is eligible for a special enrollment period under COMAR 14.35.07.12—19, the applicant or enrollee shall be in accordance with the applicable effective date specified for each special enrollment period under COMAR 14.35.07.12—19.*
- (4) When an enrollee's enrollment is terminated by the enrollee as set forth in 45 CFR §155.430(b)(1) or terminated by the Exchange under 45 CFR §155.430(b)(2)(i)—(vii) the applicant or enrollee shall be in accordance with the applicable effective date of the termination set forth in 45 CFR §155.430(d).*

.04 Calculation of Subsidies Under the Program.

- A. The subsidy may not exceed the enrollee's premium amount.*
- B. The subsidy shall be calculated for eligible enrollees in a tax household and applied to the premium for each eligible enrollee.*
- C. The subsidy shall be applied to the premium balance remaining after application of the Advance Premium Tax Credit.*
- D. The subsidy shall be calculated based on, and applied only to, the portion of premium allocated to essential health benefits.*
- E. For each benefit year after 2022, the Board shall set the payment parameters for the Program before December 31 of the calendar year preceding the applicable plan year.*

.05 Exchange Data Collection, Reporting, and Maintenance.

- A. The Exchange shall track data on the Program including:*
 - (1) On a monthly basis, or more frequently as required to appropriately monitor enrollment and spending under the program, the average number of young adults receiving subsidies under the Program;*
 - (2) On a monthly basis, or more frequently as required to appropriately monitor enrollment and spending under the program, the average subsidy amount received by young adults under the Program; and*
 - (3) The impact the Program has on rates in the individual insurance market.*
- B. Information tracked in §A of this regulation shall be posted monthly on the website of the Individual Exchange and included in the Annual Report required under Insurance Article, §31–119(d), Annotated Code of Maryland.*
- C. The Individual Exchange shall maintain documents and records relating to the Program, whether paper, electronic, or in other media, for each benefit year for at least 10 years.*
- D. The Individual Exchange shall ensure that the collection of personally identifiable information is limited to information reasonably necessary for use in the calculation of subsidies. Any use and disclosure of personally identifiable information shall be limited to those purposes for which the personally identifiable information was collected, including for purposes of data validation.*
- E. The Individual Exchange shall maintain standards that provide administrative, physical, and technical safeguards for the personally identifiable information consistent with applicable State and federal standards.*

.06 Disbursement of Subsidies.

- A. The Individual Exchange shall transmit subsidies directly to the carrier with whom the recipient is enrolled, to be applied to the recipient's premium.*
- B. A carrier that receives notice from the Individual Exchange that an individual enrolled in the carrier's QHP is eligible for subsidies shall:*
 - (1) Reduce the portion of the premium charged to or for the individual for the applicable month or months by the amount of the subsidy;*
 - (2) Notify the Exchange of the reduction in the portion of the premium charged to the individual in accordance with 45 CFR §156.265(g); and*
 - (3) Include with each billing statement, as applicable, to or for the individual the amount of the subsidy for the applicable month or months, and the remaining premium owed.*

C. Refunds.

(1) If a carrier discovers that it did not reduce the portion of the premium charged to or for an enrollee for the applicable month or months by the amount of the subsidy in accordance with §B(1) of this regulation, the carrier shall notify the enrollee of the improper reduction within 45 calendar days of the carrier's discovery of the improper reduction and refund any excess premium paid by or for the enrollee.

(2) Unless a refund is requested by or for the enrollee, the carrier shall, within 45 calendar days of discovery of the error, apply the excess premium paid by or for the enrollee to the enrollee's portion of the premium or refund the amount directly.

(3) If any excess premium remains after application of premium as described in §C(2) of this regulation:

(a) The carrier shall apply the excess premium to the enrollee's portion of the premium for each subsequent month for the remainder of the period of enrollment or benefit year until the excess is fully applied or refund the remaining amount directly; and

(b) At the end of the period of enrollment or benefit year, the carrier shall refund any excess premium within 45 calendar days of the end of the period of enrollment or benefit year, whichever comes first.

(4) If a refund is requested by or for the enrollee, the refund shall be provided within 45 calendar days of the date of the request.

D. A carrier may not refuse to commence coverage under a policy or terminate coverage on account of any delay in payment of a subsidy on behalf of an enrollee if the carrier has been notified by the Exchange that the carrier will receive such advance payment.

E. Carriers shall participate in the payment and reconciliation process established by the Individual Exchange to ensure that appropriate payments are received by the carriers and that excess payments are returned by the carriers to the Individual Exchange.

.07 Document Retention and Audits.

A. Carriers shall maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the disbursement of subsidies made pursuant to Regulations .03 and .06 of this chapter for a period of at least 10 years and shall make those documents and records available upon request by the Board or its designee to any such entity for purposes of verification, investigation, audit, or other review of subsidy disbursement.

B. The Individual Exchange or its designee may audit a carrier offering subsidies through the program to assess its compliance with the requirements of this chapter. The carrier shall ensure that its relevant contractors, subcontractors, or agents cooperate with any audit under this section. If an audit results in a finding of material weakness or significant deficiency with respect to compliance with any requirement of these regulations, the carrier shall complete all of the following:

(1) Within 30 calendar days of the issuance of the final audit report, provide a written corrective action plan to the Individual Exchange for approval;

(2) Implement the corrective action plan; and

(3) Provide to the Individual Exchange written documentation of the corrective actions once taken.

MICHELE S. EBERLE
Executive Director