

## **Title 14**

### **INDEPENDENT AGENCIES**

#### **Subtitle 35 MARYLAND HEALTH BENEFIT EXCHANGE**

#### **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

#### **Notice of Proposed Action**

[22-078-P]

The Maryland Health Benefit Exchange proposes to amend Regulations **.11—, .13, .18, and .19** 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**.

#### **Statement of Purpose**

The purpose of this action is to align the annual open enrollment period with 45 CFR §155.410(e), and to clarify certain SEPs and add new SEPs in compliance with 45 CFR §155.420. The proposed action includes SEPs for the Maryland Health Insurance Easy Enrollment Program in accordance with Insurance Article, §31-202, Annotated Code of Maryland, and for pregnancy in accordance with Insurance Article, §15-1316(c)(2), Annotated Code of Maryland. This action also brings COMAR into alignment with Exchange operations.

#### **Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

#### **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 St., 6th Floor, Baltimore, MD 21202, or call 410-547-7371, or email to mhbe.publiccomments@maryland.gov. Comments will be accepted through May 9, 2022. A public hearing has not been scheduled.

**.11 Enrollment in a QHP or Insurance Affordability Program Through the Individual Exchange.**

- A. (text unchanged)
- B. The annual open enrollment period for the Individual Exchange shall be:
  - (1) For the benefit year beginning on January 1, 2019, November 1, 2018 through December 15, 2018; [and]
  - (2) For the benefit years beginning on January 1, 2020 and [after] *on January 1, 2021*, November 1 through December 15 of the calendar year preceding the benefit year; *and*
  - (3) *For the benefit years beginning on January 1, 2022 and after, November 1 of the calendar year preceding the benefit year through January 15 of the benefit year.*
- C. (text unchanged)
- D. Coverage selected during an open enrollment period shall:
  - (1) (text unchanged)
  - (2) For the benefit year beginning on January 1, 2020 and after, be effective on:
    - (a) January 1 for QHP selections received by the Individual Exchange on or before December 15 of the calendar year preceding the benefit year; [and]
    - (b) January 1 or later, for QHP selections received by the Individual Exchange on or after December 16 and on or before December 31 of the calendar year preceding the benefit year if the Board of Trustees modifies or extends the annual open enrollment period under Regulation .11C of this chapter; *and*
    - (c) *February 1 for QHP selections received by the Individual Exchange on or after January 1 or before January 15 of the benefit year.*
- E.—I. (text unchanged)

**.12 Special Enrollment Periods — Loss of Minimum Essential Coverage or Termination of Other Specified Coverage Through the Individual Exchange.**

- A. A qualified individual and, when specified in this regulation, an enrollee, a qualified individual's dependent, or an enrollee's dependent are eligible for a special enrollment period for loss of minimum essential coverage or other specified coverage if:
    - (1) (text unchanged)
    - (2) A qualified individual or a qualified individual's dependent was enrolled in coverage through a non-calendar year group health plan, [or] individual health insurance coverage, *or qualified small employer health reimbursement arrangement (as defined in §9831(d)(2) of the Internal Revenue Code)* and the policy or plan year ends in the middle of the calendar year, even if the qualified individual or the qualified individual's dependent has the option to renew the coverage;
    - (3) A qualified individual or the qualified individual's dependent loses pregnancy-related coverage described in COMAR 10.09.24.03A(2) and 45 CFR §155.420(d)(1)(iii) *or loses access to health care services through coverage provided to a pregnant women's unborn child based on the definition of a child in 42 CFR §457.10;* or
    - (4) (text unchanged)
  - B. A qualified individual and, when specified in this regulation, an enrollee, a qualified individual's dependent, or an enrollee's dependent are eligible for a special enrollment period for loss of minimum essential coverage or other specified coverage under circumstances including, but not limited to:
    - (1) (text unchanged)
    - (2) A qualified individual or the qualified individual's dependent loses eligibility for employer-sponsored coverage that is COBRA continuation coverage or continuation coverage under State law because:
      - (a) [the] *The individual exhausted COBRA continuation coverage or continuation coverage under State law;*
- [or]
- (b) *The individual's employer was paying all or part of the premiums and completely ceased contributions to the individual or dependent's coverage; or*
  - (c) *A governmental entity was subsidizing coverage and completely ceased contributions to the individual or dependent's coverage; or*
  - (3) (text unchanged)
- C.—D. (text unchanged)
  - E. To be eligible for a special enrollment period under this regulation, a qualified individual, an enrollee, a qualified individual's dependent, or an enrollee's dependent shall:
    - (1)—(2) (text unchanged)
    - (3) Provide *attestation or documentary evidence from an employer, carrier, legal/court proceeding, public health coverage program, death certificate, or the qualified individual that, together, indicates the date of coverage loss and the qualified individuals losing coverage.*

F.—G. (text unchanged)

*H. Notwithstanding the standards outlined in this regulation and in Regulations .13—.19 of this chapter, if a qualified individual is eligible for advance payments of the premium tax credit or cost-sharing reductions, the advance payment of the premium tax credit or the cost-sharing reduction shall be effective on the qualified individual's enrollment date.*

### **.13 Special Enrollment Periods — Change in Family Status Through the Individual Exchange.**

A. (text unchanged)

B. [A qualified individual, an enrollee, a qualified individual's dependent, and an enrollee's dependent are] *An enrollee is eligible for a special enrollment period for change in family status if the [qualified individual or] enrollee loses a dependent or is no longer considered a dependent through:*

(1)—(3) (text unchanged)

C.—D. (text unchanged)

E. Enrollment in a QHP selected by a qualified individual, an enrollee, the qualified individual's dependent, or the enrollee's dependent during a special enrollment period under this regulation shall be effective:

(1) For marriages, the first day of the month following the date that the Individual Exchange receives the QHP selection;

(2) [In the case of] *For birth, adoption, placement for adoption, placement in foster care, or court order, on a date chosen by the qualified individual or enrollee that is either:*

(a) [on the] *The date of birth, adoption, placement for adoption, placement in foster care, or effective date of court order; or*

(b) *The first day of the month following the date that the Individual Exchange receives the QHP selection;*

(3)—(4) (text unchanged)

### **.18 Special Enrollment Period — Permanent Move.**

A. A qualified individual, enrollee, qualified individual's dependent, or enrollee's dependent is eligible for a special enrollment period if the qualified individual, enrollee, qualified individual's dependent, or enrollee's dependent:

(1) (text unchanged)

(2) Was enrolled in minimum essential coverage for one or more days in the 60 days prior to the move, unless the qualified individual, enrollee, qualified individual's dependent, or enrollee's dependent:

(a) (text unchanged)

(b) Is moving from a state that did not expand Medicaid or MCHP eligibility set forth in §2001 of the ACA and the individual was not eligible for APTC or CSR in the individual's previous state of residence because the individual's household income was below 100 percent of the FPL; [or]

(c) Is leaving incarceration, except if the individual was incarcerated pending disposition; [and]

(d) *Lived in a service area where no QHP was available through the Exchange for 1 or more days during the 60 days preceding the move or during the most recent preceding open enrollment or special enrollment period;*

(e) *Had pregnancy related coverage or access to healthcare services through unborn child coverage described in 45 CFR §155.420(d)(1)(iii);*

(f) *Had medically needy coverage described in 45 CFR §155.420(d)(1)(iv); or*

(g) *Is an Indian; and*

(3) (text unchanged)

B.—C. (text unchanged)

D. The effective date of coverage for a qualified individual, enrollee, qualified individual's dependent, or enrollee's dependent who is determined eligible for the special enrollment period under this regulation and selects enrollment in a QHP during the special enrollment period under §C of this regulation shall be:

(1) The first day of the [following] month *following the date of the permanent move* for QHP selections received by the Individual Exchange on or before the date of the permanent move; *or*

(2) The first day of the following month for QHP selections received by the Individual Exchange after the date of the permanent move [between the first and 15th day of a month; or].

[(3) The first day of the second following month for QHP selections received by the Individual Exchange after the date of the permanent move between the 16th and the last day of a month.]

### **.19 Special Enrollment Period — Other.**

A. An enrollee or an enrollee's dependent *enrolled in the same plan* is eligible for a special enrollment period if the enrollee or enrollee's dependent:

(1) [is] *Is determined newly eligible or ineligible for APTC; or*

(2) [has] *Has a change in eligibility for [CSR] cost-sharing reductions.*

[The effective date of coverage for enrollees determined eligible for a special enrollment period under this section is the first day of the month after the Individual Exchange receives the QHP selection.]

B. *A qualified individual or a qualified individual's dependent is eligible for a special enrollment period if the qualified individual or qualified individual's dependent:*

(1) *Experiences a decrease in household income;*

(2) Is newly determined eligible by the Individual Exchange for APTC; and  
(3) Had minimum essential coverage as described in 26 CFR §1.5000A-1(b) for one or more days during the 60 days preceding the date of the financial change.

C. A qualified individual, a qualified individual's dependent, or an enrollee's dependent is eligible for a special enrollment period through the Maryland Easy Enrollment Health Insurance Program as codified in Md. Code, Ins. §31.202 if they indicate on a state tax return that they:

(1) Attest to not having health care coverage; and

(2) Authorize the Comptroller of Maryland to share information from the qualified individual's tax return with the Maryland Health Benefit Exchange.

D. A qualified individual or qualified individual's dependent is eligible for a special enrollment period if the qualified individual or qualified individual's dependent is confirmed to be pregnant by a health care practitioner.

[B.] E.—[F.] I. (text unchanged)

J. Individual Coverage Health Reimbursement Arrangements and Qualified Small Employer Health Reimbursement Arrangements.

(1) A qualified individual, an enrollee, a qualified individual's dependent, or an enrollee's dependent is eligible for a special enrollment period if they newly gain access to an individual coverage health reimbursement arrangement (HRA) (as defined in 45 CFR §146.123(b)) or are newly provided a qualified small employer health reimbursement arrangement (QSEHRA) (as defined in §9831(d)(2) of the Internal Revenue Code).

(2) The triggering event is the first day on which coverage for the qualified individual, enrollee, qualified individual's dependent, or enrollee's dependent under the individual coverage HRA can take effect, or the first day on which coverage under the QSEHRA takes effect

(3) A qualified individual, an enrollee, a qualified individual's dependent, or an enrollee's dependent qualifies for this special enrollment period regardless of whether they were previously offered or enrolled in an individual coverage HRA or previously provided a QSEHRA, if the qualified individual, enrollee, qualified individual's dependent, or enrollee's dependent is not enrolled in the individual coverage HRA or covered by the QSEHRA on the day immediately prior to the triggering event.

K. A qualified individual or qualified individual's dependent is eligible for a special enrollment period if the qualified individual or qualified individual's dependent:

(1) applies for coverage on the Exchange during the annual open enrollment period or due to a qualifying event;

(2) is assessed by the Exchange as potentially eligible for Medicaid or MCHP; and

(3) is determined ineligible for Medicaid or MCHP by the Department either after open enrollment has ended or more than 60 days after the qualifying event.

[G.] L. (text unchanged)

M. A qualified individual, an enrollee, a qualified individual's dependent, or an enrollee's dependent is eligible to enroll during any month of the year if:

(1) They are eligible for APTC;

(2) Their household income does not exceed 150 percent of the federal poverty line; and

(3) The tax filer's applicable percentage for purposes of calculating the premium assistance amount, as defined in §36B(b)(3)(A) of the Internal Revenue Code, is set at zero.

[H. A qualified individual, an enrollee, a qualified individual's dependent, or an enrollee's dependent has 60 days from the date of the change in circumstances creating eligibility for a special enrollment period under this regulation to notify the Individual Exchange of the change in circumstances and select a QHP.

I. The effective date of coverage for a qualified individual, an enrollee, a qualified individual's dependent, or an enrollee's dependent who is determined eligible for a special enrollment period under §§B—G of this regulation is:

(1) The first date of the following month for QHP selections received by the Individual Exchange between the first and the 15th day of the month; or

(2) The first day of the next following month for QHP selections received by the Individual Exchange between the 16th and the last day of a month.]

N. Eligibility Windows.

(1) A qualified individual, an enrollee, a qualified individual's dependent, or an enrollee's dependent shall notify the Individual Exchange of the change in circumstances and select a QHP within the following time frames:

(a) For §§A, B, F, and K of this regulation, 60 days after the date of the event that triggers the special enrollment period;

(b) For §§E and G – I of this regulation, 60 days before or after the date of the event that triggers the special enrollment period;

(c) For §C of this regulation (Maryland Easy Enrollment Health Insurance Program), 35 days after the date specified on the SEP notification letter sent to the qualified individual; and

(d) For §D of this regulation (pregnancy), 90 days after the date of confirmation of pregnancy by a health care practitioner.

(2) If a qualified individual, an enrollee, a qualified individual's dependent or an enrollee's dependent did not receive timely notice of an event that triggers eligibility for a special enrollment period under this chapter, and otherwise was reasonably unaware that a triggering event described in this chapter occurred, the Exchange shall allow

*the qualified individual, enrollee, or, when applicable, their dependent to select a new plan within 60 days of the date that they knew, or reasonably should have known, of the occurrence of the triggering event.*

*O. Enrollment in a QHP selected by a qualified individual, an enrollee, the qualified individual's dependent, or the enrollee's dependent during a special enrollment period under this regulation shall be effective:*

*(1) For the special enrollment period under §A of this regulation (newly eligible or ineligible for APTC), §E of this regulation (qualified individual or dependent is an Indian) and §F of this regulation (changes in citizenship status):*

*(a) The first day of the month after the Individual Exchange receives the QHP selection when the plan has been selected between the first and the 15th of the month; or*

*(b) The first day of the following month after the Individual Exchange receives the QHP selection when the plan has been selected between the 16th and the last day of the month;*

*(2) For the special enrollment period under §D of this regulation (pregnancy):*

*(a) The first day of the month in which pregnancy is confirmed, including retroactive coverage dates; or*

*(b) The first day of the month in which the QHP selection is received by the Individual Exchange;*

*(3) For the special enrollment period under §G of this regulation (previously incarcerated) and §J of this regulation (newly eligible for an individual coverage HRA or a QSEHRA):*

*(a) The first day of the month following the triggering event for QHP selections received by the Individual Exchange before the release date or before the triggering event; or*

*(b) The first day of the following month for QHP selections received by the Individual Exchange after the release date or the triggering event;*

*(4) For the special enrollment period under §K of this regulation (Medicaid or MCHP ineligibility determination), an appropriate date determined by the Exchange based on the circumstances of the special enrollment period; and*

*(5) For special enrollment periods other than the special enrollment periods specified in §O(1)—(4), the first day of the month following the date that the Individual Exchange receives the QHP selection.*

*P. Notwithstanding §O, in the case of untimely notice of a triggering event as described in §N(2) of this regulation, a qualified individual, enrollee, qualified individual's dependent, or enrollee's dependent shall have the option of the earliest effective date that would have been available based on the applicable triggering event under this chapter.*

MICHELE S. EBERLE  
Executive Director