ADMINISTRATION'S PROPOSED AMENDMENTS TO MARYLAND HEALTH PROGRESS ACT OF 2013 - SUMMARY

SENATE BILL 274/HOUSE BILL 228

I. Medicaid Expansion

B. *Out-of-State foster care youth*: Authorize Medicaid to cover if federal government makes feasible in the future.

C. *No means-testing for foster care youth:* Correct mistake in bill.

D. *Continuous eligibility*: Not opposed to policy but has fiscal impact.

II. MHBE Financing

A – D. *Premium tax distribution and appropriation*: Portion of existing premium tax attributable to health insurers distributed to MHBE fund (except for MCOs and HMOs); must be kept in separate account; spent through minimum $35 million annual appropriation; unspent funds revert to GF; and non-state funds charged first.

F. *Expenditure on delegated functions*: MHBE funds may be spend on operations delegated by contract to another entity.

III. MHIP Transition

A. *Notice to members*: Require notice to members of new insurance options in 2014.

B. *MHIP and Reinsurance Program report*: Require annual report on transition plan, reinsurance program, and use of funds.

C. *Future claims*: Clarify that must reserve funds for future claims filed after Plan closure.

D. *Reenrollment prohibited after 1/1/14:* Clarify language regarding closure to new enrollment in January.

E. *Partial closure beginning 1/1/14*: Clarify authority to close some plans in January for members better off with federal Exchange subsidies.

IV. Plan Certification: Requirements, Enforcement and Appeals

A. *Stay of MHBE plan certification pending appeal*: Request for hearing within 10 days of agency action stays decision pending final MHBE decision; thereafter governed by APA; tracks similar MIA enforcement framework.

B. *ACA-mandated certification standards*: Make general categories of ACA plan certification requirements mandatory, but not specific federal regulatory requirements which may change, and allow Exchange flexibility within federal standards.

F. *Policies are "interim policies*:" Clarify that standards reflecting policies adopted by the Board are limited to formal "interim policies" or regulations.

G. *MHBE imposition of penalties*: MHBE may set penalty up to $100 per violation, and may consider nature of the violation, carrier's knowledge, corrective action, and pattern of violations.

H. *Metal levels required in MHBE*: Clarify ACA's requirements that carriers must offer bronze, silver, and gold metal levels in the Exchange.

V. Qualified Vision Plans

A. *Pediatric vision carve-out prohibited*: Conform law to federal regulation clarifying that pediatric vision benefits must be offered (embedded) in the medical plan and may not be carved out in a stand-alone vision plan.

B. *Qualified vision plan requirements*: Clarify to conform to new federal guidance that stand-alone vision plans need not cover pediatric essential vision benefits.

VI. Carrier Delegation to MHBE

A. *Consumer held harmless*: Where carrier has delegated functions to MHBE, consumer not to suffer adverse consequences of mistakes; MHBE and carrier shall hold consumer harmless.

B. *Carrier not liable for MHBE error*: Where MHBE has assumed by law or contract obligation to perform a function normally required of carrier, carrier not liable or subject to regulatory sanction for MHBE mistake, and MIA may regulate MHBE action, subject to Commissioner's recusal from MHBE Board where appropriate.

VII. Functions and Operations of MHBE

A. *Accessibility for persons with disabilities*: Provide that MHBE will comply with Section 508 of the Rehabilitation Act and federal regulations adopted thereunder in exercising its functions, *e.g*. website, electronic calculator.

VIII. SHOP Rules for Employer Contributions

A. *Reference plan dependent on type of coverage*: Clarify that must be consistent with type of coverage selected by employee, *e.g*. individual, family.

B. *"Carrier" includes "insurance holding company system"*: Clarify with respect to employer and employee choice models.

IX. Consolidated Services Center

A. *Collaboration with HEAU*: Provide that Exchange, CSC, and Attorney General's Health Education and Advocacy Unit shall work collaboratively to assist consumers.

B. *CSC referral to producer*: Provide that where consumer has insurance procured through producer, CSC employee shall refer back to producer unless consumer does not want referral or producer is not authorized to sell in Exchange.

X. SHOP and Individual Exchange Navigator Programs

A. *"Connector" entity*: Substitute for "Navigator" entity to reflect new federal framework.

B. *Assistance for incarcerated individuals*: With respect to purposes of navigator program, include assistance for individuals uninsured because of prior incarceration.

C-D. *Collaboration among agencies*: Provide that in developing training programs, MHBE shall consult and collaborate with MIA, DHMH, and HEAU.

XI. Continuity of Care

A-B. *Inclusion of dental conditions*: Amend definitions of acute and serious chronic conditions to include dental conditions.

C. *Serious chronic condition definition*: Remove requirement that patient's ability to perform daily activities must be compromised.

D. *Health care provider definition*: Adopt definition in Health Occupations Article to ensure that provider be authorized by law to provide health care services.

G. *Prior authorization provided*: Require that relinquishing carrier provide receiving carrier with prior authorization documentation with consent of enrollee.

H, J. *Health provider may trigger continuity of care requests*: In addition to enrollee and enrollee's representatives, enrollee's health care provider may request prior authorization to be honored or continuation of treatment permitted.

K. *Notice to enrollee*: Receiving carrier must provide notice to new enrollee of continuity of care rights and obligations.

L. *Compensation for out-of-network provider*: Default payment shall be receiving carrier's in-network rate; provider and carrier may agree to alternative; if no agreement reached, provider may decline to provide continued treatment with 10 days' notice to enrollee; carrier must facilitate enrollee's transition to new provider.

N. *No balance billing*: Clarify that enrollee may not be balanced billed under these provisions.

O. *Transition to new provider*: Clarify receiving carrier's obligation to facilitate.

Q. Effect on other laws: Clarify that provisions not intended to make other continuity of care laws more restrictive.

R. *Provision of data*: Strengthen requirement that carriers, MCOs, and providers submit data necessary to evaluate efficacy of provisions.

S-U. *Nondiscrimination and disparate impact*: Provide that data should be collected regarding any discriminatory or disparate impact to the extent feasible and permitted by law; require report to include assessment of impact on different populations, including individuals with mental health and substance use diagnoses, and on discrimination based on sexual orientation and gender identity.

W. *Applicability to 2015 contracts*: Clarify that provisions are applicable to contracts issued after 1/1/15; moving applicability date to 1/1/14 not feasible because of carrier filing and MIA review deadlines.

X. *Medicaid fee-for-service programs*: Carve out application of provisions to Medicaid FFS programs.

Y. *Extension of medical conditions by mutual agreement*: Provider and carrier/MCO may agree to apply continuity of care to conditions beyond those specified.

XII. MHBE Standing Committee

A. *Ongoing, broad-based, standing stakeholder advisory committee*: In addition to ad hoc, issue-specific, advisory committees, MHBE will establish in July, 2014 a standing committee with broad-based, diverse representation charged with providing input on wide range of issues requested by Board.

XIV. Tobacco Rating

A. *Study on impact of tobacco rating*: Require report by December 1, 2014 on impact of rating on access, affordability, uptake, and health outcomes, and whether State should institute more stringent requirements than current permissible 1:1.5 rating.

XV. Administration of MHBE

A. *Specification of bases for nondiscrimination*: Specifically enumerate the bases on which the MHBE will not discriminate, including gender identity and sexual orientation.

B. *Data collection*: In its annual report, the MHBE shall identify disparities based on enumerated factors, to the extent feasible and permitted by law.

XVI. Interim Policies

A. *Parameters for interim policies*: Provide that interim policies may be adopted only when necessary for timely compliance with federal guidance; policies must be submitted to AELR within 6 months and will sunset within following 12 months.

XVII. **HealthStat Process** – pending.

XVIII. Captive Producers

Summary of Administration's proposal: Captive producers may transition carrier's existing enrollees into Exchange QHP, and may provide enrollment assistance to individuals who contact the carrier. They must refer consumers back to any producer of record, and they must disclose their employment with the carrier, the limitations on the assistance they can provide, and the availability of other options in the Exchange. They must obtain an attestation from the consumer regarding these disclosures, and they are subject to the same licensing and Exchange authorization requirements as are independent producers.

A. *Disclosure regarding producer of record*: Provide that captive producer must disclose possibility that there may be a producer of record and any available information regarding that producer.

B. *Information on products not sold by captive producer's carrier*: Captive producer subject to same restrictions as navigators regarding providing information about other products, and must refer consumer to Exchange resources (navigator program, independent producers, CSC) regarding such other products.

D. *Documentation and record retention in lieu of attestation:* Provide that carrier must document and retain records regarding the required disclosures to consumers rather than obtaining a consumer attestation, particularly since most transactions will be telephonic.

E. *Referral to producer of record*: Rather than requiring referrals under all circumstances, apply navigator program policy in which referral not necessary if consumer no longer wants to work with producer or the producer is not authorized to sell in Exchange.

F. *Skills necessary for appropriate referrals*: Clarify that producer authorization training must ensure producers have the knowledge necessary to make appropriate referrals to Medicaid, MCHP, the appropriate connector entity, other producers, *etc*.

G. *Current appointment required*: Provide that captive producer's appointment with carrier must be current.

H. *Best interests of consumer*: Make explicit captive producer's obligation to act in the best interests of the consumer.

I. *2015 sunset*: No longer permit captive producers to enroll consumers who initiate contact with carrier after December 31, 2015; require referral to CSC, navigator program, independent producer. *etc*.

J-K. *Written information about MHBE*: Captive producer must provide consumer written information about the Exchange upon request, and referral must be to appropriate Connector entity rather than individual navigator to ensure appropriate assistance.

L. *List of captive producers*: Carriers must provide MHBE with updated list of current captive producers.

M. *Enforcement*: Provide that non-compliance with disclosure and record retention requirements is grounds for sanctions with respect to both the captive producer and carrier.

P. *Captive producer definition*: exclusive appointment and employment with single carrier.

Q. *Non-discriminatory transition of carrier's current enrollees*: Carrier may not use marketing practices or provide assistance in manner that would result in adverse selection or other discriminatory effect.

XIX. Application Counselors

Summary of Administration's proposal: Pursuant to new federal guidance, the Exchange may certify application counselors and entities to provide enrollment assistance to consumers. Counselors and entities may be providers, community-based organizations or local government agencies, they will not be paid by the Exchange, and they will be subject to navigator certification, training and regulatory restrictions.

A. *MHBE discretion*: MHBE may administer application counselor program in light of its needs and resources.

B. "Sponsoring" entities: Provide that instead of "authorizing" an application counselor entity, as is done in the navigator program, the Exchange may "designate" an entity and determine the appropriate requirements for such designation. Distinguish also between "application counselors" and "navigators" for clarity's sake.

C. *Conflicts of interest*: Make more explicit the prohibition against an application counselor being paid by a carrier, producer, or TPA for its enrollment services.

F. *Fraudulent acts*: Provide that, as with navigators and producers, it is a fraudulent insurance act to hold oneself out as an application counselor without appropriate certification.

G. *Application counselor and sponsoring entity definitions*

XX. Health Information Exchange

A. *DHMH grant-making authority*: Give DHMH authority to make grants to CRISP, the State-designated Health Information Exchange.

XXI. Pediatric Dental Benefits

A. *Impact study*: Require the MHBE and MIA to study the impact of recent federal regulations permitting medical plans to carve out pediatric dental benefits if a stand-alone option is available, and not to require that everyone purchase pediatric dental benefits despite their inclusion in EHB under the ACA.

XXII. **Association and Student Health Plans** – Pending.