

Protections for Marylanders with Preexisting Conditions

Maryland Health Insurance Coverage

Protection Commission

November 20, 2018

CURRENT PREEXISTING CONDITION PROTECTIONS IN AFFORDABLE CARE ACT

- ❑ **Guaranteed issue and renewability requirement:** Insurance companies may not deny someone a policy, or refuse to renew one, because the individual has a preexisting condition.
- ❑ **Ban on preexisting condition exclusions:** Insurance companies may not refuse to cover services people need to treat a preexisting condition.
- ❑ **Community rating:** Insurance companies may not charge people higher premiums because of health status.

APPLICABILITY TO INSURANCE MARKETS

- ❑ **Guaranteed issue requirement:** Applies to fully insured individual, small group, and large employer plans.
- ❑ **Ban on preexisting condition exclusions:** Applies to *all* individual, small group, and large employer plans.
- ❑ **Community rating:** Applies to individual and small group (50 or fewer employees); community rating standard applies to members of large group, but premiums can vary among groups based on health status.

OPTIONS FOR CONTINUING PROTECTIONS FOR MARYLANDERS WITHOUT ACA

- ❑ **Take no action:** Rely on existing state and federal law, including:
 - 1) State law that incorporates ACA preexisting condition protections by reference;
 - 2) Some stand-alone state law provisions that provide various degrees of protection in some markets; and
 - 3) Federal law (Health Insurance Portability and Accountability Act, or HIPAA) that provides guaranteed issue and prohibition on preexisting condition exclusion coverage for certain people.
- ❑ **Supplement existing stand-alone state law protections by reinstating some preexisting condition protections in state law prior to ACA.**
- ❑ **Enact actual ACA provisions as stand-alone provisions in Maryland law.**

OPTION ONE

Current state law that incorporates ACA protections by reference

Md. Code Ann., Insurance § 15-137.1 Applicable provisions of Affordable Care Act

(a) Notwithstanding any other provisions of law, **the following provisions of Title 1, Subtitles A, C, and D of the ACA apply to individual health insurance coverage and health insurance coverage offered in the small and large group markets**, as those terms are defined in the federal Public Health Service Act, issued or delivered in the State by an authorized insurer, nonprofit health service plan, or health maintenance organization:

- (1) coverage of children up to the age of 26 years;
- (2) preexisting condition exclusions;**
- (3) policy rescissions;
- (4) bona fide wellness programs;
- (5) lifetime limits;

Md. Code Ann., Insurance § 15-137.1

Applicable provisions of Affordable Care Act (cont.)

- (6) annual limits for essential benefits;
- (7) waiting periods;
- (8) designation of primary care providers;
- (9) access to obstetrical and gynecological services;
- (10) emergency services;
- (11) summary of benefits and coverage explanation;
- (12) minimum loss ratio requirements and premium rebates;
- (13) disclosure of information;
- (14) annual limitations on cost sharing;
- (15) child-only plan offerings in the individual market;
- (16) minimum benefit requirements for catastrophic plans;
- (17) health insurance premium rates;**
- (18) coverage for individuals participating in approved clinical trials;
- (19) contract requirements for stand-alone dental plans on the Maryland Health Benefit Exchange;
- (20) guaranteed availability of coverage;**
- (21) prescription drug benefit requirements; and
- (22) preventive and wellness services and chronic disease management.

OPTION ONE

Risk of relying on current state laws that incorporate ACA protections by reference

- ❑ **Could potentially be subject to legal challenge:** If relevant provisions of ACA were repealed or declared unconstitutional, state laws incorporating them by reference could potentially be subject to challenge, particularly those that incorporate the federal statutory provisions only by general rather than specific reference.

- For example, § 15-137.1 of the Insurance Article simply incorporates the ACA's "health insurance premium rates" without referring to specific rating provisions in the ACA.

OPTION ONE

Current stand-alone state law provisions that provide some protections

Individual Market

Several provisions of Insurance Article together protect guaranteed issue and renewability:

- During the annual open enrollment period, an individual shall be permitted to enroll in a health plan, § 15-1316(b)(4)(i).
- A carrier shall provide the special enrollment periods specified in 45 CFR § 155.420, § 15-1316(c), (d).
- Carriers cannot deny coverage to individuals because of claims experience or health status-related factor, § 15-1316(f) and (g).
- Except for other non-health status-related factors, carriers shall renew plans at the option of the eligible individual, § 15-1309(e) and (f).

OPTION ONE

Weaknesses in current stand-alone state law provisions Individual Market

- ❑ **No blanket prohibition of preexisting condition exclusions:** Stand-alone provisions do not prohibit insurers from excluding preexisting conditions from coverage (although HIPAA would likely offer protection for certain individuals).**
- ❑ **No prohibition on health-status rating:** While a carrier may not deny or refuse to renew coverage because of claims experience or a health status-related factor, no state law provision precludes charging higher premiums based on health status.

** HIPAA prohibits insurers from imposing pre-existing condition exclusions on certain individuals. In order to qualify as HIPAA-eligible, a person must: 1) have had at least 18 months of prior coverage, not interrupted by a gap of more than 63 consecutive days; 2) have exhausted any available continuation coverage, such as COBRA; 3) not be eligible for new group coverage or Medicare; and 4) have had their most recent coverage in a group health plan.

OPTION ONE

Current stand-alone state law provisions that provide some protections

Small Group Market

Several provisions of Insurance Article together protect guaranteed issue and renewability:

- During the annual open enrollment and special enrollment periods, each eligible employee shall be permitted to enroll, § 15-1208.1 and 1208.2.
- A carrier shall issue its health benefit plans to each small employer that meets the requirements of this section, § 15-1209 (b).
- A carrier that offers coverage to a small employer shall offer coverage to all of its eligible employees and dependents, § 15-1210 (a).
- Except for other non-health status-related factors, carriers shall renew all plans at the option of the small employer, § 15-1212.

OPTION ONE

Current stand-alone state law provisions Small Group Market

- ❑ **Several provisions of Insurance Article together protect community rating and limit adjustment of rates to certain factors.**
- ❑ **Limited adjustments based on health factors allowed for grandfathered plans offered by employers who have not offered a plan in the prior 12 months.**

Caveat: Some language of these rating provisions makes reference to the ACA, although references are to specific provisions.

Insurance, § 15-1205. Community and premium rates for health benefit plans

(a)(1) This subsection applies to a carrier with respect to any health benefit plan that is a grandfathered health plan, as defined in § 1251 of the Affordable Care Act.

(2) In establishing a community rate for a health benefit plan, a carrier shall use a rating methodology that is based on the experience of all risks covered by that health benefit plan without regard to any factor not specifically authorized under this subsection or subsection (g) of this section.

Small Group Market (cont.)

(3) A carrier may adjust the community rate only for:

(i) age;

(ii) geography based on the following contiguous areas of the State:

1. the Baltimore metropolitan area;
2. the District of Columbia metropolitan area;
3. Western Maryland; and
4. Eastern and Southern Maryland; and

(iii) health status, as provided in subsection (g) of this section.

(4) Rates for a health benefit plan may vary based on family composition as approved by the Commissioner.

(5) (i) Subject to subparagraph (ii) of this paragraph, after applying the risk adjustment factors under paragraph (3) of this subsection, a carrier may offer a discount not to exceed 20% to a small employer for participation in a wellness program.

(ii) A discount offered under subparagraph (i) of this paragraph shall be:

1. applied to reduce the rate otherwise payable by the small employer;
2. actuarially justified;
3. offered uniformly to all small employers; and
4. approved by the Commissioner.

OPTION ONE

Current stand-alone state law provisions Small Group Market (cont.)

□ Balance of § 15-1205 section sets forth:

- rating methodology used to establish premium rate;
- application of risk adjustment factors;
- rate band in relation to community rate;
- rating methods and practices based on commonly accepted actuarial assumptions and sound actuarial principles
- administrative discounts for small employers
- adjustments to community rate

OPTION ONE

Weaknesses in current stand-alone state law provisions Small Group Market

- No blanket prohibition of preexisting condition exclusions:** Stand-alone provisions do not prohibit insurers from excluding preexisting conditions from coverage (although HIPAA would likely offer protection for certain individuals).**
- Prohibition on health-status rating has some limited exceptions:** Carriers may charge higher premiums based on health status for certain plans within certain parameters for a limited period of time.

** HIPAA prohibits discrimination within group health plans in coverage or premiums on the basis of health status, and it limits preexisting condition exclusions to 12 months (18 months for late enrollees), reduced by months in which an enrollee had creditable coverage without a gap of more than 63 days and only for a 6-month look back period.

OPTION ONE

Current stand-alone state law provisions Large Group Market

**Several provisions of Insurance Article together protect both guaranteed issue/
renewability and community rating:**

- Carrier may not establish rules for eligibility of an individual to enroll under a group health benefit plan based on any health status-related factor, § 15-1406(a).
- Carriers shall allow an eligible employee or dependent to enroll, *but carriers may establish limitations or restrictions on the amount, level, extent, or nature of the benefits of coverage for similarly situated individuals enrolled in the health benefit plan*, § 15-1406(b).
- Carrier may not require an individual member of a group to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual, based on any health status-related factor, § 15-1407.
- Guaranteed issuance of coverage provision in Title I, Subtitle C of the ACA applies beginning January 1, 2014, § 15-1410.

OPTION ONE

Weaknesses in current stand-alone state law provisions Large Group Market

- ❑ **No blanket prohibition of preexisting condition exclusions:** Stand-alone provisions do not prohibit insurers from excluding preexisting conditions or waiting periods from coverage (although HIPAA would likely offer protection for certain individuals).**

** HIPAA prohibits discrimination within group health plans in coverage or premiums on the basis of health status, and it limits preexisting condition exclusions to 12 months (18 months for late enrollees), reduced by months in which an enrollee had creditable coverage without a gap of more than 63 days and only for a 6-month look back period.

SUMMARY OF OPTION ONE

Advantages: No need for additional legislation

Risks:

- ❑ ACA protections incorporated by reference in Maryland law could potentially be subject to legal challenge;
- ❑ Stand-alone protections in state law subject to certain limitations.
 - Guaranteed issue and renewability protected in all markets;
 - Community rating not protected in individual market and subject to certain limitations in small and large group markets;
 - Unconditional prohibition on pre-existing condition exclusions not protected in any markets.

OPTION TWO

Supplement existing stand-alone protections with some preexisting condition protections in state law prior to ACA

- ❑ **Individual Market:** Insurance article offered some protections for consumers with preexisting conditions, like maximum look-back and exclusion periods, but these provisions were effectively repealed with passage of ACA, § 15-137.1 and § 12-205(b)(9).
- ❑ **Small Group Market:** Insurance article limited preexisting condition exclusions to 12 months (18 months for late enrollees), reduced by months in which an enrollee had creditable coverage without a gap of more than 63 days, and only for a 6-month look-back period; also precluded pregnancy-related exclusions, § 15-508. Repealed with passage of ACA.
- ❑ **Large Group Market:** Insurance article prohibited waiting periods for consumers with creditable coverage who had met prior waiting period requirements, and limited preexisting condition exclusions to 12 months (18 months for late enrollees), reduced by months in which an enrollee had creditable coverage without a gap of more than 63 days, and only for a 6-month look-back period; also precluded pregnancy-related exclusions, § 15-507. Repealed with passage of ACA.

OPTION THREE

Enact actual ACA protections as stand-alone provisions in Maryland law

❑ **Advantage:** Would reduce risk of potential legal challenge by reinforcing legislative intent to preserve ACA protections in state law.

❑ **Preexisting condition exclusions:**

ACA SEC. 2704 (42 U.S.C. 300gg-3)(a) —A group health plan and a health insurance issuer offering group or individual health insurance coverage may not impose any preexisting condition exclusion with respect to such plan or coverage.

OPTION THREE

Enact actual ACA protections

☐ Community Rating:

ACA SEC. 2701 (42 U.S.C. 300gg)

(a) PROHIBITING DISCRIMINATORY PREMIUM RATES

(1) IN GENERAL.—With respect to the premium rate charged by a health insurance issuer for health insurance coverage offered in the individual or small group market—

(A) such rate shall vary with respect to the particular plan or coverage involved only by—

(i) whether such plan or coverage covers an individual or family;

(ii) rating area, as established in accordance with paragraph (2);

(iii) age, except that such rate shall not vary by more than 3 to 1 for adults

(consistent with section 2707(c)); and

(iv) tobacco use, except that such rate shall not vary by more than 1.5 to 1; and

(B) such rate shall not vary with respect to the particular plan or coverage involved by any other factor not described in subparagraph (A).

OPTION THREE

Enact actual ACA protections as stand-alone provisions in Maryland law

❑ Guaranteed issue and renewability:

ACA SEC. SEC. 2702 (42 U.S.C. 300gg–1)

(a) GUARANTEED ISSUANCE OF COVERAGE IN THE INDIVIDUAL AND GROUP MARKET.—Subject to subsections (b) through (e), each health insurance issuer that offers health insurance coverage in the individual or group market in a State must accept every employer and individual in the State that applies for such coverage.

(b) ENROLLMENT.—

(1) RESTRICTION.—A health insurance issuer described in subsection (a) may restrict enrollment in coverage described in such subsection to open or special enrollment periods.

(2) ESTABLISHMENT.—A health insurance issuer described in subsection (a) shall, in accordance with the regulations promulgated under paragraph (3), establish special enrollment periods for qualifying events (under section 603 of the Employee Retirement Income Security Act of 1974).

(3) REGULATIONS.—The Secretary shall promulgate regulations with respect to enrollment periods under paragraphs (1) and (2).

OPTION THREE

Enact actual ACA protections

SEC. 2703 (42 U.S.C. 300gg–2) GUARANTEED RENEWABILITY OF COVERAGE.

(a) IN GENERAL.—Except as provided in this section, if a health insurance issuer offers health insurance coverage in the individual or group market, the issuer must renew or continue in force such coverage at the option of the plan sponsor or the individual, as applicable.

SEC. 2705 (42 U.S.C. 300gg–4) PROHIBITING DISCRIMINATION AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS.

(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan or coverage based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

- (1) Health status
- (2) Medical condition (including both physical and mental illnesses)
- (3) Claims experience
- (4) Receipt of health care
- (5) Medical history
- (6) Genetic information
- (7) Evidence of insurability (including conditions arising out of acts of domestic violence)
- (8) Disability
- (9) Any other health status-related factor determined appropriate by the Secretary.

QUESTIONS?