AMENDMENTS TO MARYLAND HEALTH PROGRESS ACT OF 2013 - SUMMARY

SENATE BILL 274/HOUSE BILL 228

I. Medicaid Expansion

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

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

C. *Foster care youth definition*: Change the definition of "independent foster care adolescent" to "former foster care adolescent," which is a cosmetic change for clarity only. All Medicaid beneficiaries up to age 21, including former foster care children, are entitled to receive EPSDT benefits. Moreover, former foster care children, like all adults on Medicaid, will be entitled to adult benefits (which do not include EPSDT) from the moment of turning 21.

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.

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

F. *CO-OP premium tax exemption*: Exempt CO-Ops from existing 2% premium tax for 5 years.

III. MHIP Transition/State Reinsurance Program

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.

F. *MHIP report*: Provide more specificity in the language describing the report on the MHIP transition and the State reinsurance program, so that it tracks more closely DLS' language in the budget bill requiring the same report.

G. *Authorization for State Reinsurance Wrap-around Program*: Begin January 1, 2014 instead of 2015.

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 to go beyond federal standards.

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

D. *MHBE imposition of penalties*: MHBE may set penalty up to $5,000 per violation, and may consider nature of the violation, carrier's knowledge, corrective action, and pattern of violations.

E. *Metal levels required in MHBE*: A QHP must be at least at the bronze level of coverage unless it is a catastrophic plan; a carrier must offer at least one QHP at each of the bronze, silver, and gold levels in each Exchange in which it participates (Individual and/or SHOP); and any carrier offering in the outside market must offer at least one sliver plan and one gold plan.

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; provide that where an error on the part of the Exchange creates a problem regarding the carrier's receipt of premium, subsidies, or cost-sharing, the Commissioner may order that the Exchange provide restitution to the carrier for the loss of such premiums and subsidies.

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; Clarify that the Exchange's compliance with Section 508 does not affect any obligation governing accessibility for individuals with disabilities to which it may be subject under the American with Disabilities Act.

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; require that the provider be "actively managing" the condition.

D. *Health care provider definition*: Adopt definition in Health Occupations Article to ensure that provider be authorized by law to provide health care services; *include alcohol and drug abuse treatment programs*, which are authorized under Section 8-401 of the Health

General Article to provide outpatient or residential treatment, since their services are often reimbursed as program services and not as individual practitioner services.

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

F. *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.

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

H. *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.

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

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

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

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

M. *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.

N. *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.

O. *Medicaid fee-for-service programs*: Apply the continuity of care provisions to Medicaid FFS programs in the following manner: 1) exempt from the continuity of care provisions transitions from commercial carriers into Medicaid fee-for-service programs; 2) apply the continuity of care provisions to individuals seeking to continue with their Medicaid fee-for-service provider when they transition to a carrier, subject to the conditions set out in the bill; and 3) apply the prior authorization requirement to transitions from Medicaid FFS to carriers by individuals covered by behavioral health and dental benefits, to the extent the benefits are administered by a TPA, While the Medicaid program will work towards future applicability of the continuity of care provisions for individuals transitioning from commercial coverage into Medicaid FFS, at this juncture it remains operationally infeasible.

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

Q. *MHCC and Continuity of Care study*: Add the Maryland Health Care Commission to the group of State agencies charged with conducting the continuity of care study.

R. *AOB law*: Provide explicitly that where a nonparticipating provider and the carrier/MCO cannot agree on the rate of compensation, the AOB law permitting a patient to

assign benefits and consent to balance billing applies in the same way it would have absent the continuity of care provisions.

S. *Patient confidentiality protections regarding prior authorizations*: Provide that patient confidentiality protections apply to an enrollee's consent for prior authorization to be provided to the receiving carrier (*e.g*. where a minor may consent to substance use treatment without parental consent.)

T. *List of conditions to which nonparticipating provider provisions apply*: Amend so that the first four conditions (acute, serious chronic, pregnancy, and mental health/substance use disorder) are listed, the balance are enumerated as examples of acute and serious chronic conditions, and the last category of conditions on which the provider and carrier agree is retained. This approach addresses the internal inconsistencies in the original list, in which some of the enumerated conditions could be defined as acute or serious chronic, and yet others which would fall in those two categories were not specifically listed.

U. *Commercial carriers provision of dental services*: Allow commercial carriers to address continuity of dental and treatment in progress in a manner more consistent with current practices as long as all parties agree and comply with the same protections for the consumer required by these provisions (no greater cost-sharing, *etc*).

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 March, 2014 a standing committee with broad-based, diverse representation charged with providing input on wide range of issues requested by Board; provide that a Board member will serve as a liaison to the Committee; with respect to the Committee's charge, in addition to providing input on any policy issues on which the Board seeks feedback, provide that the Board liaison, in consultation with the Chair and members of the Committee, may propose additional policy issues for the Committee's input.

XIV. Tobacco Rating

A. *Study on impact of tobacco rating*: Require report by September 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. 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; clarify that consumers interested in other plans be referred to the Exchange or independent producers, but not directly to other carriers.

C. *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.

D. *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.

E. *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*.

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

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

H. Require carriers to provide records to the Exchange regarding compliance with disclosure

requirements on a quarterly basis; sunset both components of the program after 3 years (instead of only the "cold-calling" component in 2 years), and require a study of its effect on Exchange enrollment, reduction in percentage of uninsured, *etc*. to determine whether the program should be continued; require referral to CSC, navigator program, independent producer, *etc*.

I. *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.

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

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

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

M. *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.

N. *Clarification of language describing activities of captive producer*: Clarify that a captive producer may "enroll" a consumer in a QHP as opposed to "sell" a QHP, since the term "sell" is a broad term which could encompass offering general information and marketing activity which need not be subject to captive producer regulatory requirements.

XVIII. 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.

D. *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.

E. *Application counselor and sponsoring entity definitions*

XIX. Health Information Exchange

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

XX. 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.

B. Purchase of essential pediatric dental benefits: Authorize MHBE to require children to have essential pediatric dental benefits.

XXI. Student Health Plan exemption: Provide exemption for Student Health plans from the requirement to offer plans on the Exchange, since federal guidance exempts these plans from guaranteed availability.