



## MEMORANDUM

**DATE:** November 17, 2022

**TO:** Commissioners

**FROM:** David Sharp  
Director, Center for Health Information Technology & Innovative Care Delivery

**SUBJECT:** Final Action – Amendments to COMAR 10.25.17: *Benchmarks for Preauthorization of Health Care Services*

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### Background

Staff seeks Commission action in adopting amendments to COMAR 10.25.17: *Benchmarks for Preauthorization of Health Care Services*. Health-General Article § 19-108.2 (2012) required the Commission to work with State-regulated insurers, nonprofit health service plans, health maintenance organizations, and pharmacy benefit managers (collectively, “payors”) to implement, in a phased approach, electronic preauthorization<sup>1</sup> processes in a series of four benchmarks.<sup>2</sup> Payors required to comply with the law have implemented the benchmarks. The law requires MHCC to adopt regulations to establish a process by which a payor may be waived from attaining one or more benchmarks for extenuating circumstances.<sup>3, 4</sup>

### Amendments

The proposed amendments extend the duration of time on a waiver from the benchmark requirements from two to five years; add language requiring a payor granted a waiver to notify the MHCC within 30 days when circumstances justifying the waiver have changed; add language to permit MHCC to withdraw a waiver for cause; and includes other miscellaneous changes.

### Formal Comments

On September 9, 2022, proposed amendments were published in the Maryland Register for a 30-day formal comment period. Staff received a letter endorsed by MedChi – the Maryland State Medical Society, Maryland Community Health System, Maryland Nurses Association, American College of Nurse Midwives – Maryland Affiliate, and Mid-Atlantic Association of Community Health Centers (attached). The letter requests that MHCC not extend the benchmark waiver period from two to five years due to concerns about the impact this

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<sup>1</sup> Preauthorization is required before certain medical services can be rendered or certain pharmaceuticals dispensed for reasons such as the availability of low-cost generic alternatives, age restrictions, or prescribing higher than normal dosages.

<sup>2</sup> The four benchmarks were: (1) by October 1, 2012, provide online access to a listing of all medical services and pharmaceuticals that require preauthorization and the key criteria for making a preauthorization determination; (2) by March 1, 2013, establish an online system to receive preauthorization requests electronically and assign a unique identification number to each request for tracking purposes; (3) by July 1, 2013, ensure that all electronic preauthorization requests for pharmaceuticals are approved in real-time or within one business day of receiving all pertinent information, and for non-urgent medical services, within two business days of receiving all pertinent information; (4) by July 1, 2015 establish a process that allows health care providers to override a step therapy or fail-first protocol when submitting an electronic pharmaceutical preauthorization request.

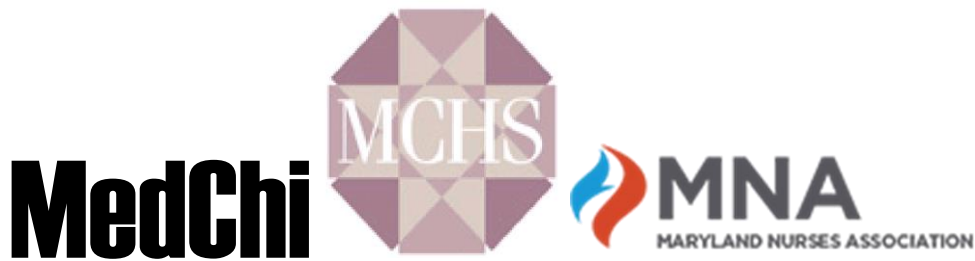
<sup>3</sup> Circumstances include premium volume less than \$1,000,000 annually in the State; a group model health maintenance organization; or other circumstances determined by the Commission.

<sup>4</sup> There are currently eight payors who are in waiver status.

could have on consumers. Staff proposes to keep the current duration of a benchmark waiver at two years.

**Staff Recommendation**

Staff recommends the Commission approve amendments to COMAR 10.25.17: *Benchmarks for Preauthorization of Health Care Services* with modification to remove proposed amendments extending the waiver period to five years.



October 7, 2022

*Sent via email justine.springer@maryland.gov*

Justine Springer  
Program Manager  
Maryland Health Care Commission  
4160 Patterson Ave.  
Baltimore, Maryland 21206

RE: 10.25.17 Benchmarks for Preauthorization of Health Care Services

Dear Ms. Springer:

On behalf of the above-referenced organizations, we thank you for the opportunity to submit comments on proposed regulations – COMAR 10.25.17. These regulations have been critical in ensuring consumers have timely access to prescribed medication by requiring carriers to streamline preauthorization requirements, including establishing and maintaining an online preauthorization system for providers to communicate with carriers. The current regulations allow the Maryland Health Care Commission (MHCC) to grant a waiver from these requirements for 2 years. The proposal extends the duration of time from 2 to 5 years. It is our understanding that this revision is being sought to reduce administrative activities associated with the renewal of waivers.

Our organizations strongly recommend that the two-year waiver period not be extended. Even 2 years may be too generous, given rapid advances in technology. If a carrier cannot meet the MHCC's benchmarks, there should be every effort to ensure that the insurer can come into compliance. Consumers should not have to wait an additional 5 years for the preauthorization system to become more efficient by standardizing reviews of provider requests through an online system.

While we understand that payors must notify the MHCC within thirty days when circumstances justifying the waiver have changed and that the MHCC has the authority under this proposal to remove a waiver for cause, the onus is then placed on the MHCC and not on the payors. Justifying why a waiver is needed only every two years is not an undue hardship. We would request that the language remains every 2 years rather than extending to every 5 years. Thank you.

Sincerely,

Gene Ransom, CEO  
MedChi, The Maryland State Medical Society

Salliann Alborn, CEO  
Maryland Community Health System

Christie Waterman, President  
Maryland Nurses Association

Jan Kriebs, Legislative Committee Chair  
American College of Nurse Midwives – Maryland Affiliate

Nora Hoban, CEO  
Mid-Atlantic Association of Community Health Centers