



# Maryland COMAR 10.25.17

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## Preauthorization of Health Care Services

*Final Action*

DRAFT – NOVEMBER 17, 2022



# Background

- ▶ State law (2012) sought to create administrative efficiencies with preauthorization by implementing electronic preauthorization processes for medical services and pharmaceuticals
  - The driver was to minimize manual processes that relied heavily on telephone, fax, and paper-based communications
- ▶ The law established four electronic preauthorization benchmarks
  - Staff worked with State-regulated insurers, nonprofit health service plans, health maintenance organizations and pharmacy benefits managers (payors) to implement the benchmarks in a phased-approach



# Benchmarks

1. By October 1, 2012, provide online access to a listing of all medical 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 electronic preauthorization requests and assign a unique identification number to each request for tracking purposes
3. By July 1, 2013, process electronic preauthorizations for pharmaceuticals in real-time or within one business day of receiving all pertinent information, and process non-urgent medical requests within two business days of receiving all pertinent information
4. By July 1, 2015, establish an electronic override process for a step therapy or fail-first protocol for electronic preauthorizations for pharmaceuticals



# Implementation – A Retrospective View



- ▶ The largest payors have implemented all four benchmarks
- ▶ Seven payors have a waiver due to extenuating circumstances\* permitted in the law (see Appendix for listing of payors)

*\*Includes premium volume less than \$1,000,000 annually in the State, a group model health maintenance organization, and other extenuating circumstances determined by the Commission*



# Proposed Amendments and Rationale

- ▶ Extend benchmark waiver duration from two to five years
  - Reduce administrative activities associated with processing waivers for payors that remain in waiver status
- ▶ Require a payor to notify MHCC within 30 days when circumstances justifying a waiver change
  - Allow MHCC to reassess need for a waiver, as needed
- ▶ Permit MHCC to withdraw a waiver for cause
  - Ensure payors maintain compliance with the law
- ▶ Other miscellaneous changes
  - Needed updates to various regulations (e.g., remove past compliance date of July 1, 2015 for the fourth benchmark)



# Informal Comments

- ▶ Draft amendments released on April 22, 2022 for a three-week informal comment period:
  - Two comments were received from the **Maryland Department of Aging (MDOA)** and **Legal Action Center (LAC)**
    - MDOA recommended adding language to clarify the process by which a payor can request a review of a denial or withdrawal of a waiver
      - **STAFF ACTION:** Added language to specify the process by which a payor can request an oral presentation to the Commission and the method by which the Commission must issue a decision
    - LAC recommended adding language to Regulation .03 that benchmarks comply with the Mental Health Parity and Addiction Equity Act (42 U.S.C. § 300gg-26 and 29 U.S.C. §1185a) and Md. Code Ins. § 15-802.
      - **STAFF ACTION:** It was determined adding the LAC language was out of scope



# Formal Comments

- ▶ A Notice of Proposed Action was included in the Maryland Register on September 9, 2022\* for a 30-day comment period
  - One comment 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**
  - Requests the duration of a benchmark waiver not be extended from two to five years
    - **STAFF ACTION:** Removed proposed change that would extend the waiver from two to five years

*\*Volume 49, Issue 19, Page 876.*



## Action

- ▶ Staff requests the Commission adopt as final proposed permanent amendments to COMAR 10.25.17: *Benchmarks for Preauthorization of Health Care Services* as proposed permanent with the modification eliminating language amending the waiver period from two to five years



# Appendix

# Payors/PBMs in Compliance



Aetna
CareFirst BlueCross BlueShield
Cigna Healthcare Mid-Atlantic Region
CVS Caremark
Express Scripts
Optum Rx
UnitedHealthcare

*Note: List is current and does not reflect merger and acquisition activity in the insurance sector*

# Payors/PBMs Granted Waivers



Payor	Waiver Reason
Benecard Services	Low market share
Direct Pharmacy Service	Low Market Share
Independent Health's Pharmacy Benefit Dimensions, LLC	Low Market Share
Kroger Prescription Plan, Inc.	Low Market Share
Kaiser Permanente	Group Model/Low Preauth Requests
Trustmark Life Insurance	Low Market Share
Trustmark Insurance Company	
WellDyne RX	Low Market Share

*Note: All waivers expire 12/31/2023*