



MEMORANDUM

DATE: July 21, 2022

TO: Commissioners

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

SUBJECT: Recommended Proposed Permanent Amendments to COMAR 10.25.17:
Benchmarks for Preauthorization of Health Care Services

Background

Staff seeks Commission action in adopting proposed 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 preauthorization¹ processes in a series of four benchmarks.² Payors required to comply with the law have implemented the benchmarks. The law gives MHCC authority to adopt regulations to establish a process by which a payor may be waived from attaining one or more benchmarks for extenuating circumstances.^{3, 4}

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.

Informal Comments

On April 22, 2022, draft amendments were released for informal public comment. Two comments were received. A summary of each and the recommended changes follow:

1. **Maryland Department of Aging (MDOA), Sarah E. Pendley, Assistant Attorney General and Principal Counsel**

¹ 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.

² 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.

³ 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.

⁴ There are currently eight payors who are in waiver status.



- Add language to Regulation 05E. *Review of Denial or Withdrawal of Waiver* allowing payors the option to request an oral presentation before the Commission as part of their waiver.
 - *Staff action: Added language to sections E(1)(c) and E(3) that allows payors to request and provide an oral presentation to the Commission as part of a payors request for the Commission to review a denial or withdrawal of a waiver.*
 - Add language in Regulation 05E. with the information a payor must include in their written request for review of a waiver denial or withdrawal, including the grounds and factual information for their disagreement, the requested remedy, and if they request an oral presentation to the Commission.
 - *Staff action: Added language to section E(1)(a-c) outlining what information a payor shall include in their request for review of a waiver denial or withdrawal.*
 - Add language to Regulation 05E. that clarifies the Commission shall issue a written decision to a payor regarding the disposition of their request for review of a waiver denial or withdrawal following the Commission's review of the request.
 - *Staff action: Added language to section E(4) specifying the Commission issue a written decision to the payor following the review regarding the disposition of their request.*
2. **Legal Action Center (LAC), Deborah Steinberg, Health Policy Attorney**
- Add language to Regulation 03. that payor parity compliance 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: None; staff determined a change was not necessary as this is beyond the scope of the statute.*

Staff Recommendation

Staff requests the Commission approve amendments to COMAR 10.25.17: *Benchmarks for Preauthorization of Health Care Services* as proposed permanent.