



Maryland COMAR 10.25.17

Benchmarks for Preauthorization of Health Care Services

Proposed Amendments

DRAFT - JULY 21, 2022



Background

- ▶ State law (2012) established four electronic preauthorization benchmarks
 - State-regulated insurers, nonprofit health service plans, health maintenance organizations, and pharmacy benefits managers (payors) required to implement electronic processes for preauthorization and have complied with the law
- ▶ The law gives MHCC authority to adopt regulations that allow payors to request a waiver from one or more benchmarks for extenuating circumstances
 - Approximately seven payors are in waiver status

** Md. Code Ann., Health-General Article § 19-108.2; see appendix for an explanation of each benchmark*

*** Extenuating circumstances include 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*



Informal Comments

- ▶ Draft amendments were released for informal public comment on April 22nd for a three-week period
- ▶ Two comments received:
 - **Maryland Department of Aging** recommended clarifying processes for a payor to request a review of a denial or withdrawal of a waiver
 - Added language in the proposed amendments under Regulation .05E
 - **Legal Action Center** recommended 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.
 - No change, beyond the scope of the statute



Proposed Amendments



- ▶ Extends the benchmark waiver duration from two to five years
- ▶ Requires a payor to notify MHCC within 30 days when circumstances justify a waiver change
- ▶ Permits MHCC to withdraw a waiver for cause
- ▶ Other miscellaneous changes



Action

- ▶ Staff requests the Commission adopt proposed amendments to COMAR 10.25.17: *Benchmarks for Preauthorization of Health Care Services*



Appendix



Preauthorization Benchmarks

- 1) 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) Establish an online system to receive preauthorization requests electronically and assign a unique identification number to each request for tracking purposes
- 3) Ensure all electronic preauthorization requests for medical services and pharmaceuticals are approved within established timeframes
- 4) Establish an electronic process to override a step therapy or fail-first protocol

Note: Amendments to the law in 2014 established the fourth benchmark

Changes Based on Informal Public Comments



- ▶ 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 wavier 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

Changes Based on Informal Public Comments



(Continued)

- ▶ 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

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