

# Memorandum

To: Commissioners

From: David Sharp, Director of the Center for Health Information Technology

Date: January 17, 2013

Subject: *COMAR 10.25.17, Benchmarks for Preauthorization of Health Care Services* – Final Action

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## Background

Staff seeks Commission adoption of COMAR 10.25.17, *Benchmarks for Preauthorization of Health Care Service* as permanent regulation. The regulation is a result of Senate Bill 540, *Maryland Health Care Commission – Preauthorization of Health Care Services – Benchmarks* (SB 540), which was signed into law on May 22, 2012. The law, Md. Code Ann., Health-General Article §§19-101 and 19-108.2, which became effective on June 1, 2012, requires the MHCC to work with State-regulated payers (payers), pharmacy benefit managers (PBMs), and providers to attain benchmarks for standardizing and automating the preauthorization of health care services through a phased approach. If necessary to attain the benchmarks, the MHCC has the authority to adopt regulations to adjust the benchmark dates and require payers and providers to comply with the benchmarks by establishing penalties for noncompliance. The law also requires the MHCC to establish regulation that specifies a process for waiving payers, PBMs, and providers from attaining the benchmarks.

The preauthorization process varies widely among payers and PBMs and in most cases is a manual process, relying heavily on faxes and phone calls. Preauthorization is generally defined as a process that requires obtaining approval for performance of certain health care-related procedures or services from a payer or PBM. Preauthorization for certain prescription medications is also required for reasons such as the availability of low-cost generic alternatives, age restrictions, and prescribing a higher than normal dosage. Preauthorization is an additional measure used to ensure that patients are receiving the most cost-effective and appropriate medication.

## Staff Recommendation

Staff recommends that the Commission adopt, as final, the proposed published regulation, COMAR 10.25.17 with no changes.

## Summary of Comments

The proposed regulations set forth the statutory preauthorization benchmarks and the waiver process and appeared in the Maryland Register on November 1, 2012. The 30-day public comment period for the proposed changes ended on December 7, 2012. Three comment letters were received during this time period. A summary of each comment appears below, along with staff's recommendation in response to the comment.

Health Facilities Association of Maryland, a long-term care provider association, expressed support for the regulation, particularly as it relates to requiring payers to establish an online process for accepting electronic preauthorization requests from providers.

*Staff Action: No change required.*

MedChi, The Maryland State Medical Society requested that the regulation also include penalties for payers and PBMs that do not comply with the benchmarks and have not received a waiver.

*Staff Action: No change recommended.* Section 19-108.2 (j) of Md. Code Ann., Health-General Article gives the Commission the authority to adopt regulation that establishes penalties for non-compliance, if necessary to obtain the benchmarks. All payers and PBMs that are required to meet the first benchmark by October 1, 2012 have complied with the law. In addition, payers and PBMs are preliminarily reporting that they are on target for compliance with the second benchmark required by March 1, 2013. At this time, staff concludes that a sufficient need does not exist to establish penalties for non-compliance within regulation.

Johns Hopkins Healthcare LLC, Office of Managed Care, commented that the regulation does not clarify how the new requirements work in conjunction with existing law, specifically Md. Code Ann., Insurance Article §15-10B-06, which specifies provisions and timeframes around preauthorization determinations by private review agents.

*Staff Action: No change recommended.* COMAR 10.25.17, if adopted, would not alter the requirements under Section 15-10B-06 of the Insurance Article. As a result, it is not required to include clarifying language within the regulation to cite the existing laws.