

To: Health Insurance Coverage Protection Commission
From: Health Insurance Consumer Protections Workgroup
Date: December 17, 2019
Re: Consumer Protections Legislation

The Health Insurance Consumer Protections Workgroup was created by Chapters 417 and 418 (HB 697 and SB 868) of the Acts of 2019. The purpose of the Workgroup was to “carry out the finding and declaration of the General Assembly that it is in the public interest to ensure that the health care protections established by the federal Affordable Care Act continue to protect Maryland residents in light of continued threats to the federal Affordable Care Act.”

Specifically, the Workgroup was charged to:

- (1) monitor the appeal of the decision of the U.S. District Court for the Northern District of Texas in *Texas v. United States* regarding the ACA and the implications of the decision for the State;
- (2) monitor the enforcement of the Affordable Care Act by the US Department of Health and Human Services; and
- (3) determine the most effective manner of ensuring that Maryland consumers can obtain and retain quality health insurance independent of any action or inaction on the part of the federal government or any changes to federal law or its interpretation.

This memo outlines the Workgroup’s work on item (3), above. The Health Insurance Consumer Protections Workgroup met four times during the interim to review HB 697 and SB 868 of 2019, as introduced, and make recommendations for legislation that would codify the ACA’s consumer protections in Maryland law. The meetings were open to the public, and video recordings and meeting materials can be found at <http://dls.maryland.gov/policy-areas/md-health-insurance-coverage-protection-commission>.

The attached legislation represents the Workgroup’s best effort to draft language that mirrors the Affordable Care Act, and come to consensus as much as possible on the bill’s technical requirements. The items listed below merit special consideration by the Health Insurance Coverage Protection Commission and the General Assembly:

- **Discrimination Based on Health Status.** Section 15–1A–06 prohibits a carrier from establishing rules for eligibility based on health status–related factors, including health condition, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, and disability. Section 15–1A–06 does not include sex and gender identity in this draft because they are not specified as a “health status factor” in 42 U.S.C. 300gg–4, the section of the ACA on which § 15–1A–06 was based. Instead, sex is specifically covered in Section 1557 of the ACA which only applies to health programs and activities that receive federal financial assistance. Section 1557 of the ACA does not address gender identity. The majority of the workgroup determined that prohibiting rules

for eligibility based on sex and gender identity was a policy decision beyond the charge of the Workgroup and would be more appropriate as a stand-alone bill if a legislator chooses to introduce legislation to address the issue.

- **Preventive Wellness Services.** 15-1A-10(a)(4) requires coverage without cost sharing for certain women's preventive care and screenings. The General Assembly will need to decide what type of religious exemption/accommodation to include for the women's preventive services benefit (specifically, for contraception). Some or all of the applicable federal regulations are currently subject to an injunction in one or more states. The existing Maryland mandates for contraceptive drugs and devices (§ 15-826), male sterilization (§ 15-826.2), in-vitro fertilization (§ 15-810), and fertility preservation procedures (§ 15-810.1) include an exception for religious organizations that could be used as a model, but the Maryland exception is different from the current federal exception.
- **Summary of Benefits and Coverage Explanation.** 15-1A-13 requires the Commissioner, in consultation with MHBE, to develop standards to be used by a carrier to compile and provide to consumers a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable health benefit plan. The discussed whether the summary of benefits is a core consumer protection that the group is charged with including in the bill. The majority of the Workgroup concluded that it is within the scope of the Workgroup and the section is included in the draft legislation attached to this memo, for the Commission's consideration.
- **Date of Federal Regulations for Required Consistency of State Regulations.** The Workgroup determined that some protections provided in the ACA and federal regulations are extremely dense and complicated and are better suited for State regulations than statute. The Workgroup discussed whether to require State regulations to be consistent with federal regulations on the last day the ACA was constitutional or to pick a static date. The majority of the Workgroup concluded that the last day the ACA was constitutional is most appropriate and that is what is included in the attached draft. It should be noted that some Workgroup members fear that this approach may result in the State modeling regulations after federal regulations that are not in the best interest of Maryland consumers.
- **Contingency Based on the Status of ACA Consumer Protections.** The Workgroup had lengthy discussions on whether to include a contingency provision in the bill or not and the potential wording. Section 3 of the attached bill makes its enactment contingent on the repeal of the Affordable Care Act, or a final determination in *Texas v. United States* that the Affordable Care Act is unconstitutional. It requires the Attorney General to notify DLS within 5 days after a repeal or final judgement. If DLS does not receive notice by July 1, 2025, the Act will be null and void.
- **Contingency Based on Funding.** Several participants requested that the legislation be contingent on the availability of funding, noting that the ACA provides advanced premium tax credits and other funding that substantially defrays the premium costs

associated with the ACA's consumer protections. We have drafted language (below) for the General Assembly's consideration.