

DOUGLAS F. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 29, 2009

The Honorable Martin J. O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: Senate Bill 638 and House Bill 610

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency, Senate Bill 638 and House Bill 610, companion bills entitled "Health Insurance - Bona Fide Wellness Programs - Incentives." We write to discuss the differences between the two bills.

Senate Bill 638 and House Bill 610 authorize a carrier to provide reasonable incentives to an individual who is an insured, a subscriber or a member for participation in a bona fide wellness program offered by the carrier under certain conditions. The bills also allow a carrier to condition an incentive for participation in a bona fide wellness program on an individual satisfying a standard that is related to a health factor if certain conditions are met. One condition is that the incentives offered not exceed 20% of the cost of the coverage. The House version of this provision states that the incentive may not exceed 20% of the cost of employee-only coverage under the plan, or:

when the plan provides coverage for a spouse or dependent children, all incentives for participation in the bona fide wellness program do not exceed 20% of the cost of the coverage in which the employee and the spouse or dependent children are enrolled.

The Honorable Martin J. O'Malley
April 29, 2009
Page 2

House Bill 610, page 5, lines 11-15. The equivalent language in the Senate Bill provides:

when the plan provides coverage for family members, all incentives for participation in the bona fide wellness program do not exceed 20% of the cost of the coverage in which the family members are enrolled.

Senate Bill 638, page 4, lines 29-32.

Chapter 639 of 2007, "Health Insurance - Family Coverage Expansion Act," requires carriers that allow family coverage to offer coverage for a domestic partner and dependent children of a domestic partner at the request of an insured under an individual policy, or of the group policy holder of a group policy. In light of this change, now codified at Insurance Article § 15-403.2, the term "family," used in the Senate Bill, is broader and more accurate than the phrase "the employee and the spouse or dependent children" used in the House Bill.

In a second difference between the two bills, Senate Bill 638 lists, as a further condition of requiring an insured to satisfy a standard that is related to a health factor that "individuals are provided a reasonable alternative standard or a waiver of the standard as required under subsection (d)(1) of this section." The equivalent provision in House Bill 610 omits the phrase "as required under subsection (d)(1) of this section." While either version is sufficient, the Senate Bill is more precise.

Very truly yours,


Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Rob Garagiola
The Honorable Dan K. Morhaim
The Honorable John P. McDonough
Joseph Bryce
Karl Aro