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**TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
SENATE FINANCE COMMITTEE**

FEBRUARY 26, 2020

SENATE BILL 872 – HEALTH INSURANCE - CONSUMER PROTECTIONS

POSITION: SUPPORT WITH AMENDMENTS

Thank you for the opportunity to provide written comments regarding Senate Bill 872. Senate Bill 872 is intended to expressly codify all the consumer protections from the Affordable Care Act (ACA) directly into Maryland law. Senate Bill 872 is in direct response to the continued threats to the ACA, and to ensure that Maryland consumers would continue to enjoy the ACA consumer protections even if the ACA was partially or fully repealed, invalidated by the courts, or weakened through federal regulations. The Maryland Insurance Administration already has authority under § 15-137.1 of the Insurance Article and other statutes to enforce the ACA consumer protections addressed by the bill, but many of the ACA requirements are currently incorporated into state law solely by cross-reference to the federal statutes and regulations.

The Consumer Protections Workgroup of the Maryland Health Insurance Coverage Protection Commission (MHICPC) (of which the MIA was an active member) met throughout the summer and fall of 2019 to draft a bill that accurately and completely codified the ACA consumer protections currently listed in § 15-137.1 into a new Title 15, Subtitle 1A of the Insurance Article. The new subtitle retains a list of cross-references to current ACA requirements that will allow the MIA to continue to enforce all existing ACA requirements as long as the federal law remains in effect (§ 15-1A-02). The bill then expressly codifies several specific ACA consumer protections and requires the MIA to adopt regulations “to the extent necessary” to implement some of the more technical aspects of the requirements that are currently addressed in detailed federal rules.

As drafted, there is new nondiscrimination language included in the proposed § 15-1A-22, which was not previously vetted by the Consumer Protections Workgroup of the MHICPC. The MIA is concerned that the new language may lead to unintended consequences. The Consumer Protections Workgroup was tasked to expressly codify all the consumer protections from the ACA directly into Maryland law. Section 15-1A-22 appears intended to codify the non-discrimination requirements under Section 1557 of the ACA. It is important to note, however, that the federal regulations adopted by the Obama Administration under Section 1557 provide that the general prohibition on discrimination does not apply to situations where state law establishes distinctions between certain protected classes (for example, a state benefit mandate that only applies to minors is not considered age discrimination). “Age” and “marital status” are proposed as two of the protected classes in § 15-1A-22. The Maryland General Assembly has previously enacted several insurance laws that include distinctions between individuals based on age and marital status. The MIA believes that to be consistent with existing ACA requirements, § 15-1A-22 needs to be revised to expressly indicate that restrictions based on age or marital status that are specifically codified in other sections of state law are not considered discriminatory.