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February 26, 2020

To: The Honorable Shane E. Pendergrass  
Chair, Health and Government Operations Committee

From: Patricia F. O'Connor, Health Education and Advocacy Unit

Re: House Bill 1071 Public Health - Substance-Related Disorder Services (Maryland Patient Protection and Treatment Ethics Act): Information

The Office of the Attorney General's Health Education and Advocacy Unit (the HEAU) submits the following information about House Bill 1071, which would prohibit false and misleading statements to consumers in advertising materials, on a call line, on a website, or in any marketing materials relating to substance-related disorder services, made by a behavioral health program, practitioner, or their contractors. The bill would impose requirements that the false or misleading statements be material and made knowingly or willfully. The Consumer Protection Act applies to such statements and does not impose knowing, willful, and materiality requirements. The imposition of these requirements would undermine current consumer protections by establishing a higher threshold of proof.

Md. Code Ann., Com. Law § 13-303 simply provides that “[a] person may not engage in any unfair, abusive, or deceptive trade practice” in the sale of consumer services, which include the services defined in this bill. Md. Code Ann., Com. Law § 13-301 defines unfair, abusive, or deceptive trade practices to include advertising and any “[f]alse, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers” (punctuation omitted).

The bill's more burdensome standards on page 5, line 25 and page 6, lines 3, 17, 27, would create confusion with the standards imposed by the Consumer Protection Act, which has proven effective in protecting Maryland consumers from false and misleading representations. To the extent that violations of specific prohibitions in the bill would

constitute violations of the Consumer Protection Act, we believe that current standards should apply in enforcement actions.

We also suggest that the language on page 6, line 29 be amended to state:

In addition to any other remedies otherwise available at law, a violation of this section is:

(1) an unfair, abusive or deceptive trade practice under Title 13, Subtitle 3 of the Commercial Law Article; and

(2) subject to the enforcement and penalty provisions contained in Title 13, Subtitle 3 of the Commercial Law Article.

This language aligns with other statutory provisions and eliminates the statement “whether a consumer was misled or deceived[,]” because the practices prohibited under the Consumer Protection Act violate the Act, whether or not any consumer in fact has been misled, deceived, or damaged as a result of the practice. Md. Code Ann., Com. Law § 13-302.

Thank you for your consideration of these comments.

cc: Delegate Pippy, Sponsor  
Members of the Health and Government Operations Committee