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

JANUARY 19, 2021

SENATE BILL 272 – INSURANCE - CLAIM PAYMENT - CLARIFICATION

POSITION: SUPPORT

Thank you for the opportunity to provide written comments regarding Senate Bill 272. Senate Bill 272 amends §§ 4-113 and 27-305 of the Insurance Article and clarifies that if the Maryland Insurance Administration (MIA) finds that an insurance company has violated Maryland law by failing to pay a claim or otherwise fulfilling its contractual obligations, the remedies available to the MIA include the authority to require that company to pay the claim or fulfill the contractual obligation.

Currently, these laws specify that the MIA may require a carrier to “make restitution” to a claimant who has suffered “financial injury” because of the violation. In the context of its investigation of unlawful claim denials, the MIA has encountered the argument that the payment of a claim is not “restitution” unless the policyholder advanced the claim payment out of pocket. Under this reading of “restitution,” a carrier need only pay the claimant who had the means to pay any shortfall due to the carrier’s improper denial of all or part of the claim and who can provide proof of the payment. If the claimant did not make a payment, or has lost the receipt, carriers have argued that they are not obligated to make the payment that was denied in violation of the law. This allows a carrier to benefit from its unlawful underpayment or denial of claims.

Recently, the MIA completed a market conduct investigation that revealed reimbursement for certain mental health service claims were improperly and unlawfully reduced by 30%. These claims spanned several years and involved some cases where payments were made to the policyholder while in other cases, payments were made directly to the provider. The insurance carrier wanted to require proof from the policyholder that their provider had required them to pay the amount of the charge including the 30% above the carrier’s payment, in order to

agree to reprocess the policyholder's claim. Due to the length of time that had passed since the claims were paid, many policyholders no longer had receipts of payment. Regardless of whether the policyholder paid the extra 30%, the policyholder's contract and Maryland law required the carrier to pay the 30%, so the amount was owed to the claimant.

Currently, §§15-10A-04, and 15-10D-03 of the Insurance Article specifically state that if a violation is related to an adverse decision or coverage decision the MIA has authority to require that a carrier fulfill its contractual obligations; provide health care services or payments that have been denied improperly; or take appropriate measures to restore its ability to provide health care services or payments that are provided under a contract. Senate Bill 272 seeks to make similar changes to the language in §§ 4-113 and 27-305 to have the same intended effect as the current language in §§15-10A-04, 15-10D-03.

Senate Bill 272 does not address or alter what constitutes a violation of the Insurance Article or the standard of review. It simply clarifies that when a breach occurs that is a violation of the Insurance Article, the remedies available to the Commissioner include requiring the carrier to fulfill its obligations

The Maryland Insurance Administration supports Senate Bill 272 and urges the Committee to give Senate Bill 272 a favorable report as an important consumer protection.