The League of Life and Health Insurers of Maryland

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Testimony
for the Senate Finance Committee
In **OPPOSITION** to

Senate Bill 486 – Labor and Employment – Employment Standards During an Emergency – Maryland Essential Workers' Protection Act

February 11, 2021

The League of Life and Health Insurers of Maryland Inc. respectfully **opposes** Senate Bill 486 and urges the committee to give the bill an unfavorable report.

At a high level, we find the bill to be quite broad in its application. For the bill's substantive provisions to make sense, we recommend that the sponsor narrow the scope of the bill to address only those issues germane to pandemic situations such as COVID-19. The bill seeks to address certain concerns raised during the COVID-19 pandemic with specificity; however, the definition of emergency is expansive, triggering the bill's provisions for an incredible number of scenarios beyond the scope of a true public health and infectious disease emergency. Many of the provisions (i.e., infectious disease control) would not be necessary for other conceivable emergencies. We also believe the extraordinary requirements that are arguably reasonable for a pandemic are excessive for other emergencies.

Below are our concerns with specific provisions of the bill in the order that they appear in the legislation.

Special Enrollment Period:

Every Marylander deserves affordable coverage and high-quality care. We have made real progress in our State to ensure more people are covered, and the care they receive gets them well when they are sick and keeps them well when they are healthy. But more needs to be done, especially when it comes to costs. What we do not need is an additional special enrollment period (SEP).

The Maryland Health Benefit Exchange already has the authority to provide special enrollment periods in accordance with the Affordable Care Act, and there has been a continuous COVID-related SEP in effect since March 2020. In general, we prefer that individuals apply for health insurance during open

enrollment because that helps insurers to price the products appropriately. We think the law should not require a special enrollment period during an emergency, as long as the Exchange retains its current authority. Further, the expansive definition of emergency would mandate a special enrollment period for declarations that are not health related and do not implicate access to health coverage. The Exchange continues to be in the best position to determine whether an SEP is necessary on a case-by-case basis, and to execute this process through existing state regulatory channels. We believe the changes to 31-108 of the Insurance Article should be removed.

Definitions:

The definition of emergency is overly broad and unclear in the context of this bill. As noted above, consistent with its apparent policy goal of addressing perceived gaps in COVID response, the bill should be narrowed to apply only to public health emergencies. Perhaps the definition of "emergency" should be amended to be consistent with the Governor's Health Emergency Powers at Public Safety § 14-3A-02—an "emergency" should be triggered when the Governor issues a proclamation that a catastrophic health emergency exists. "Catastrophic health emergency" means a situation in which extensive loss of life or serious disability is threatened imminently because of exposure to a deadly agent (Public Safety § 14-3A-01(b)). As currently written, every emergency of any type would seemingly trigger the provisions of the bill.

We are also concerned that the definition of "essential worker" includes a contractor or subcontractor. Health carriers contract with thousands of health care facilities and providers to provide health care services to our members. Under this legislation, health care providers who are employed by those provider groups and facilities would likely be both essential workers of their primary employer and the health carrier. The legislation is does not address the issue of which employer is responsible for the worker protections and hazard pay provided by this legislation.

Industries Impacted:

We note that many of the industries subject to this bill are already subject to regulation by State agencies, often with enhanced authority during emergencies. For example, the Maryland Insurance Administration may adopt emergency regulations germane to the health insurance industry that may be applied when: (1) the Governor has declared a state of emergency for the State or an area within the State under § 14-107 of the Public Safety Article; or (2) the President of the United States has issued a major disaster or emergency declaration for the State or an area within the State under the federal Stafford Act. (Md. INSURANCE Code Ann. § 2-115(a))

Additionally, it's not clear if this legislation applies to a managed care organization as defined in section 15-101 of the Health – General Article. If so, there may be a fiscal impact to the Medicaid program as it would require the State pay higher rates to the managed care organizations operating in Maryland, in order to account for increased expenses incurred through this legislation.

We urge the sponsor to consider whether many of the policy issues raised in this bill would be more appropriately addressed by state regulators on an as needed, industry-specific basis.

Emergency:

We recommend striking section 3-1603 of the bill in its entirety. Subsection (b) requires an "agency" to determine whether an emergency is occurring or has occurred, both of which trigger compliance with

other sections of the bill. Subsection (c) requires the agency to announce when an emergency has subsided, and thus compliance is no longer required. These subsections appear to be in conflict as applied to circumstances when an emergency has passed. Furthermore, it is inappropriate for an "agency" to determine when an "emergency" exists. Today, only the principal executive officer of a political subdivision may declare a local state of emergency, and only the Governor can declare a state of emergency. This power is rightfully narrowly tailored.

Working Conditions:

The definition of "unsafe work environment" includes "an essential employer's failure to notify workers of illnesses, broken or improperly functioning equipment, or any other dangerous or hazardous conditions which represent a reasonable threat to the essential worker's health or safety." League members would need further clarification or guidance to ensure we're in compliance with the law.

Subsection (b) allows an essential worker to refuse to fulfill a work responsibility that is required or encouraged by the employer and relates to the unsafe work environment. All League members are committed to providing a safe work environment, but in the unfortunate event of an emergency we would need our employees to be working to meet the needs of the crisis. That being said, we suggest reworking this section altogether with industry input. The current language is overly broad. Objective, measurable guidance on regulatory expectations is needed to ensure compliance.

We believe that section 3-1604 paragraph (2) requires an employer to provide essential workers with PPE at no cost; however, as we experienced during the pandemic, an employer may have trouble getting an adequate supply of PPE due to supply chain issues. Additionally, the bill does not define personal protective equipment (PPE) —what level of PPE is required? An N95 mask? A cloth mask? Also, "disease mitigation measures" would be unnecessary in many of the emergencies pondered in the current bill definition. If the scope is not narrowed to public health emergencies, it should be made clear that this requirement is only triggered in emergencies where applicable.

Emergency Health Preparedness Plans:

Section 3-1606 requires an employer to create an emergency health preparedness plan and submit it to MEMA and the emergency manager for the applicable counties annually. To ease the administrative and unnecessary burdens on employers, the annual submission should be limited to situations where companies have updated or changed the plan. There is no need to refile if nothing has changed. Some members operate multiple facilities in multiple counties, we believe it would be more efficient for employers with facilities in multiple counties to only submit their plan to MEMA.

Disease Prevention:

Subsection (a) of section 3-1607 requires an employer to take proactive steps to minimize the risk of transmission if any worker has contracted an infection disease at a worksite, including informing essential workers that they may have been exposed, and evacuating the worksite until it has been properly sanitized. Health care providers and facilities already have protocols that address disease transmission; those employers should be able to follow those current protocols, which may not include evacuating the facility. This section applies to any emergency (broadly defined) and does not make sense in non-health related situations. Infectious disease is not defined—these requirements could be triggered by any contagious disease at all (i.e., a cold) as drafted. We are also left with no clear direction on what is meant by "properly sanitized"— another example where companies will need objective criteria. How would one

determine whether the infectious disease was contracted at the worksite, triggering this section? How would one determine whether an employee contracted COVID at work versus at the grocery store or in his/her home?

Subsection (b) provides that "if an essential worker's health insurance coverage or other benefits do not cover the cost of testing for a contagious illness or disease, during an emergency, the essential employer shall pay all costs associated with that testing." This language does not contemplate a scenario where an essential employer does not provide health insurance for a contractor, but that contractor has a different primary employer. This is an important questions for carriers who, as noted above, have hundreds of providers who are contractors but are primarily employed by health care facilities and medical practice groups.

Leave:

In this section, it's not clear if the new leave requirements are in addition to existing leave/disability benefits or if an employer that already provides for the specified amount of health leave and bereavement leave for any purpose is compliant. We would request clarity for the section.

Hazard Pay and Health Care Reimbursement:

Subsection (a) would require an employer to pay hazard pay under certain circumstances. This would be very expensive for a large employers like League member companies that employs a lot of essential workers.

The bill does not address a scenario where an essential worker is required to work onsite part-time and can telework part-time. We would like clarification as to what our obligations are to provide hazard pay in that scenario. "Hazard pay" should not be required for the hours in a pay period when employee is not on a worksite exposed to worksite risks. This section should not apply to worksites in which any "hazard" is successfully mitigated. For example, in an office building setting where CDC guidelines for safety have been fully implemented, or in a single-person office setting. There should be a process for essential employer worksites to be deemed non-hazardous.

Subsection (b) requires an employer to provide financial assistance to defray health care costs. The financial assistance provided under this subsection may be taxable, which may not be the sponsor's intent. Also this section would apply regardless of whether the sickness or injury was contracted at work. What about an employee who contracts an illness from behavior outside of the workplace? Further, how would we ascertain where the illness was contracted?

Classification of Workers:

This section provides that "an essential employer may not intentionally or unintentionally misclassify an essential worker as an independent contractor or other classification in order to avoid paying an essential worker the hazard pay required under § 13–1609 of this subtitle or any other benefits due during an emergency under this subtitle." The definition of "essential worker" already includes contractors and subcontractors, so we don't believe this language provides an additional layer of protection.

Emergency Bill:

League members do not believe that it would be plausible to comply with this bill without a delayed effective date.

Although the League certainly agrees with the intent of the merits of the introduced legislation, we believe there are far more questions about the direction than answers at the current time. For the above reasons, we urge the committee to give Senate Bill 486 an unfavorable report.

Respectfully submitted,

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