

LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lt. Governor



Maryland

INSURANCE ADMINISTRATION

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202

Direct Dial: 410-468-2471 Fax: 410-468-2020

Email: kathleen.birrane@maryland.gov

www.insurance.maryland.gov

KATHLEEN A. BIRrane
Commissioner

GREGORY M. DERWART
Deputy Commissioner

**TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE**

MARCH 9, 2022

HOUSE BILL 1082 – PUBLIC HEALTH - CONSUMER HEALTH INFORMATION - HUB AND REQUIREMENTS

POSITION: LETTER OF INFORMATION

Thank you for the opportunity to provide written comments on House Bill 1082.

HB 1082 requires state and local agencies to use plain language in public communications about health, safety and social service benefits. The bill establishes the University of Maryland Herschel S. Horwitz Center for Health Literacy as the state's Consumer Health Information Hub. The Hub will assist the agencies by identifying health literacy challenges and developing resources which may be used by the agencies.

One of the core functions of the Maryland Insurance Administration (MIA) with respect to health insurance is to increase the public's understanding of insurance and the role that it plays in covering the financial cost of health care, which improves both access to care and care outcomes. During the Spring of 2021, the MIA conducted a Listening Session regarding the role that health insurance can play in reducing inequities in access to care and care outcomes. We heard from a variety of stakeholders, including health care providers; consumer advocates and consumers and one of the recurring themes was the importance of both health and health insurance literacy, so that consumers can make informed choices about health insurance options and then access and utilize benefits effectively. Speakers emphasized that oral and written communications should be easy for consumers to understand.

The MIA currently provides various written materials, videos, and presentations about health insurance literacy to consumers. These resources help explain complex terminology and

the rights and responsibilities of members under health insurance policies. The Hub could provide resources which would assist the MIA in its efforts.

To assist with the implementation of the bill, the MIA has respectfully recommended the following technical amendments and has worked with the sponsor on the drafting of amendments:

1. Page 3, § 20 - 2201, add a definition of “plain language.”
 - a. The bill refers to the Federal Plain Writing Act of 2010 (PUBLIC LAW 111–274 – OCT. 13, 2010 124 STAT. 2861) for guidance. That law defines the term "plain writing" as follows - plain writing means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. The MIA recommends that a similar definition be added.
2. Page 3, lines 10-11 use the term "public communications" without providing a definition of what is considered as a public communication. Federal law mandates that certain templates must be used regarding health benefits and costs, and the MIA provides copies of these templates in materials for the public, and may enforce requirements for their use. The Summary of Benefits and Coverage, and recently developed notices related to the No Surprises Act are examples. These federally required notices should not fall within this law. Additionally, it is important to note that some terms and documents are very technical in nature and it may be necessary to use technical terms.

It is also unclear whether bulletins that are intended for carriers or other licensees would fall within this bill. The definition of public communication could either appear with the definitions in 20-2201 or by limiting “public communications in § 20-2203. The Federal Plain Writing Act defines the term "covered document" as follows:

“(2) COVERED DOCUMENT — The term “covered document”— (A) means any document that— (i) is necessary for obtaining any Federal Government benefit or service or filing taxes; (ii) provides information about any Federal Government benefit or service; or (iii) explains to the public how to comply with a requirement the Federal Government administers or enforces; (B) includes (whether in paper or electronic form) a letter, publication, form, notice, or instruction; and (C) does not include a regulation.”

3. Page 5, lines 24-31, and page 6, lines 1-8, should be clarified to indicate that "media or media campaigns" that are "emergent" or "breaking news" do not need to be submitted for review.
4. It appears that HB 1082 is based in part on the Federal Plain Writing Act of 2010. That Act contains the following language which clarifies that the Act does not create a private cause of action.

“SEC. 6. JUDICIAL REVIEW AND ENFORCEABILITY. (a) JUDICIAL REVIEW. – There shall be no judicial review of compliance or noncompliance with any provision of this Act. (b) ENFORCEABILITY. – No provision of this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any administrative or judicial action.”

The committee should consider adding similar language to HB 1082. Otherwise, the bill may have the unintended consequence of leading to costly litigation.

5. Refer to Page 6, lines 13-17. There are two potential issues with the procurement process. First, the Hub, by making the determination as to who meets their standard (whatever that is), will be subject to litigation by those not selected. The second issue is that requiring state agencies to give preferences for those who qualify may have unintended consequences in that the best candidate for a particular procurement may not be selected. The ability to express consumer information in plain language does not mean that a vendor is otherwise competent to provide services. We also suggest that to the extent that preference or consideration be given only when the procurement specifically relates to the provision of services that fall within the focus of the bill.

The MIA thanks the committee for its attention to HB 1082 and we voice our support for the above-referenced amendments that were previously introduced by the Bill Sponsor.