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The Honorable Shane E. Pendergrass, Chair
House Health and Government Operations Committee
Room 241, House Office Building
Annapolis, Maryland 21401

RE: House Bill 709-Maryland Health Benefit Exchange - Small Business and Nonprofit Health Insurance Subsidies Program - FWA

My name is Bryson Popham and I appear today on behalf of the Maryland Association of Health Underwriters (MAHU) requesting amendments to House Bill 709.

MAHU is a Maryland trade association whose members are small businesses throughout the State who are licensed health insurance producers. They assist businesses and individuals who are seeking to obtain health insurance, and they also provide essential services in connection with maintaining health insurance coverage.

In 1993 I also had the privilege of representing MAHU, many of whose members then remain active today. That was the year that Maryland completely reformed its small group health insurance market, with the passage of House Bill 1359. We – all of us – have constantly sought to improve that law. The small group market grew to approximately 500,000 enrollees by the late 1990s. Today, approximately 250,000 Marylanders obtain health insurance from various insurers through the small group market.

The world changed again beginning in 2011, when Maryland began the process of implementing changes required under the federal law known as the Affordable Care Act. That law led directly to the establishment of the Maryland Health Benefit Exchange. It is important to note that Maryland's unique method of distributing small group health insurance through the use of third party administrators (TPAs) was singled out for praise by MIT Professor Jonathan Gruber, who conducted a study of our small group market in preparation for ACA implementation. These TPAs ("intermediaries") in the Gruber report, "have developed robust infrastructure, technical capabilities and customer service centers that are used by brokers, employers and health carriers to provide a center point of access and streamline administrative services for the non-group and small group markets." *"A Health Insurance Exchange for Maryland?" copyright 2020 page 26.*

The Exchange got off to a rocky start in 2014, but under current Executive Director Michele Eberle, it now runs smoothly and effectively.

Another phenomenon in this market has been the growth of self-funded (ERISA) plans. Many employers, if eligible, have chosen such plans for cost and plan design reasons. The result has been a further reduction in enrollment in traditional Maryland small group coverage.

Both the federal law and the Exchanges created under it were intended to primarily serve the individual health insurance market. These are persons who were and are unable to procure individual health insurance at an affordable cost. Again, the Exchange did a good job in Maryland achieving this goal, and this General Assembly has assisted with such legislation as Senate Bill 729 - Maryland Health Benefit Exchange – State–Based Young Adult Health Insurance Subsidies Pilot Program.

A small portion of the ACA was devoted to an even smaller portion of the health insurance market: employer groups of 10 employees or less with certain other restrictive characteristics. Again, this program – the Small Business Health Options Program (SHOP) program – was intended to serve only a narrow range of small businesses that had difficulty procuring coverage in the regular health insurance market.

With that background, it is possible to evaluate the potential impact of House Bill 709 on the Maryland health insurance market a whole.

First, note that House Bill 709 offers an extremely generous funding formula - $45 million in annual subsidies – to potential participants. This immediately creates a potential conflict between the more than 35,000 employers currently participating in Maryland small group and those eligible for subsidies under the provisions of this new legislation. To qualify for the subsidies, employers must obtain their policies through the Exchange. Given the minuscule enrollment in the SHOP program to date, this would be a massive shift in small group distribution.

As noted below, a public policy that provides subsidies to some, but not all, small group employers and employees is inherently unfair to those not eligible for the subsidy. In addition, the question is raised whether insurers in the small group market must take subsidies into account when calculating rates for that market. Would there be a rating impact? House Bill 709 does not address that issue.

Other issues are immediately obvious as well. For example, the substantial amount of annual subsidies under House Bill 709 is subject to available funds. What will happen should those subsidies need to be reduced or eliminated? It is worth remembering that the health care tax credit available under the SHOP program is only for two consecutive tax years. For an employer whose employees participate in premium payments for a health plan, it will be an unpleasant surprise if these subsidies are reduced or eliminated.

Additionally, upon implementation of this new program, there may be an immediate, and potentially substantial, disparity between the premiums paid under the program and those paid in the standard small group market. This raises obvious questions of fair treatment of similarly situated businesses. In other words, businesses currently insured through the Maryland small group market may be subject to higher insurance costs than other, similarly situated businesses that choose to participate in the program under this bill.

That, in turn, may severely damage the viability of the existing Maryland small group market. Businesses that are not eligible for subsidies will have no choice but to remain in Maryland small group, which will become a shrinking and less attractive risk group for insurers to pursue. In the insurance industry such a phenomenon is commonly known as a "death spiral," in which policy holders eligible for superior coverage flee their risk group for that coverage. The ones who are not eligible end up paying more for the coverage they retain – sometimes much more. Maryland small group has been a success story in our State since it was enacted 30 years ago. We should be careful to build upon that record of success.

There are other reasons not to pursue this idea at this time; therefore, the better approach is to convert House Bill 709 into a study bill, collecting the wisdom of nearly 40 years of small group experience in Maryland, and focusing on the parameters outlined by the ACA for the SHOP Program. In that way, the small group insurance market in Maryland will not be disrupted and there is a possibility that SHOP could be improved to achieve its intended purpose when the ACA was originally enacted.

On behalf of MAHU, we respectfully request that House Bill 709 be amended to comprise a multi-agency study of the small group market. The study should include a careful examination of the interaction between the SHOP program in the Exchange and the current, small group market on which more than a quarter million Maryland depend.

Very truly yours,

Bryson Popham

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