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Bill # / Title: Senate Bill 485 - Family and Medical Leave Insurance Program - Modifications

Committee: Senate Finance

Position: Support

The Maryland Insurance Administration (MIA) appreciates the opportunity to share its support for Senate Bill 485.

The Family and Medical Leave Insurance Program (Program) includes a provision under § 8.3-705 of the Labor and Employment Article that exempts employers and employees from contributing to the Program fund if the employer provides coverage to employees through a private employer plan that meets or exceeds the benefits of the Program. Currently, the law allows a private employer plan to consist of employer-provided benefits, insurance through an insurer that holds a certificate of authority issued by the MIA, or a combination of both employer-provided and insured benefits. In addition to other amendments to the Program, Senate Bill 485 proposes to eliminate the “combination” option, meaning that a private employer plan would now be required to provide the full scope of benefits of the Program under one comprehensive plan that is either entirely insured or entirely self-funded by the employer. The MIA is very supportive of this proposal due to a variety of operational and regulatory concerns related to the combination option.

Because an insurance product intended to be offered in connection with the Program would fall under the jurisdiction of the MIA, the MIA has been working very closely with the Maryland Department of Labor (MD Labor) on Program implementation issues over the last year. The Insurance Article requires insurers to file policy forms and rates with the MIA for approval before a product may be issued in Maryland, and MD Labor and MIA have been working through a variety of regulatory and logistical issues to ensure that lawful, MIA-approved insurance products that satisfy the requirements of the Program will be available for sale when the Program goes into effect. One of the more problematic issues has been how to address the combination option under § 8.3-705. There are significant concerns that allowing the combination option will complicate the regulatory oversight of private employer plans, creating obstacles to ensuring that approved insurance products satisfy all the requirements of the Program, and making enforcement of some of those requirements challenging.

Presently, there are no approved insurance products in Maryland that would fully satisfy the requirements of the Program. While certain benefits provided under the Program are analogous to short-term disability benefits currently offered under disability income policies, other Program benefits, such as parental leave and military exigency leave, are not available under existing insurance products approved in Maryland.

The MIA has determined that a comprehensive insurance product providing coverage for all the required benefits under the Program would satisfy the definition in the Insurance Article for “health insurance,” which includes disability income insurance. Consequently, the MIA clearly has existing authority to approve and regulate this type of comprehensive product as disability insurance, which is how these products are typically regulated in other states that allow paid family and medical leave insurance products.

On the other hand, an insurance product that solely provides coverage for parental leave and/or military exigency leave would not satisfy the definition of “health insurance” under Maryland law, and would therefore be subject to different statutory requirements, including those related to filing and approval of forms and rates. In the insured market, having inconsistent regulatory requirements for separate “partial” plans that provide disability leave benefits for the employee vs. parental leave benefits or military exigency leave benefits would create a confusing regulatory framework for employers, insurers, and regulators. This complexity would be compounded if parts of the private employer plan are self-funded, and other parts are insured.

The combination option under the existing law would permit a proliferation of “partial” products, where there may be stand-alone options for employee medical leave, family medical leave, parental leave, and military exigency leave. An employer would technically be permitted to satisfy the requirements of the Program with multiple piecemeal plans, some of which may be insured and some of which may be self-funded. As an initial matter, it would be very difficult for regulators to ensure that the combination of several different stand-alone plans satisfies all the requirements of the Program. The MIA must approve the insured components as valid insurance products before they can be issued in Maryland, and MD Labor must approve the entire private employer plan as meeting all the requirements for the Program in order for an employer/employee to be eligible for an exemption. MIA would not be able to assure MD Labor that a filed insurance product satisfies the requirements of the Program prior to MIA approval, if the product filed with MIA is a “partial” plan that must be combined with other insured or self-funded components in order to provide all the required benefits.

Additionally, even if MIA and MD Labor are able to determine that a combination of various “partial” plans meets the minimum requirements of the Program on paper, ensuring that the administration of the benefits under such a plan complies with all Program requirements in operation would present additional difficulties. Even though, for purposes of the Program, the combination plan would be treated as a single private employer plan with alignment of benefits across all types of leave, in reality, each component of the plan may be a separate contract, with multiple insurance companies and the employer responsible for different types of leave. In this situation, employees may experience significant confusion about who to even file a claim with.

For the above reasons, the MIA supports the proposal in Senate Bill 485 to eliminate the combination option for private employer plans, and urges a favorable committee report. The MIA thanks the Committee for the opportunity to share its support.