



The **League** of Life
and Health Insurers
of Maryland

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March 8, 2024

The Honorable Joseline Pena-Melnyk
Chair, House Health and Government Operations Committee
Room 241
House Office Building
Annapolis, MD 21401

House Bill 1412 – Abortion Care Access Grant Program and Fund - Establishment

Dear Chair Pena-Melnyk,

The League of Life and Health Insurers of Maryland, Inc. respectfully submits this *letter of information* relating to *House Bill 1412 – Abortion Care Access Grant Program and Fund – Establishment*.

House Bill 1412 establishes the Abortion Care Access Grant Program for the purpose of providing grants to improve access to abortion care services. Under the provisions of the bill, the grant program would receive funds, in part, from excess premium collected by a carrier in accordance with §1303(b)(2)(B) of the Patient Protection and Affordable Care Act (“ACA”), and from funds appropriated by the state budget, interest, and any other source accepted for benefit of the program. Senate Bill 947 would require a carrier to, in cases where the funds collected by a carrier in accordance with §1303(b)(2)(B) of the ACA exceed disbursements made by more than 10% in the previous 12-month period, use excess funds to support improving access to abortion care services in Maryland.

Since its enactment in 2010, Section 1303 of the ACA establishes several requirements with which Qualified Health Plan (“QHP”) issuers must comply in relation to coverage of certain abortion services. Notably, Section 1303 restricts the use of Federal funds from being used to pay for coverage by QHP’s of abortions for which payment would be inhibited by the Hyde Amendment. If a QHP seeks to cover abortion services, provisions of Section 1303 require the QHP to charge and collect at least \$1 per enrollee per month for such coverage, deposit the collected funds into a segregated account, and use only those segregated funds to pay for abortion services.

The provisions of Section 1303, specifically Section 1303(b)(2)(D), requires insurers to determine the amount of, and collect from its enrollees, a separate payment that equals the actuarially-determined cost of coverage for non-Hyde abortion services on an annual basis. Thus, if an insurer disburses funds for a non-Hyde abortion, it must draw those funds from the allocated amount residing in the covered individual’s segregated account. **According to a 2017 bulletin issued by the Center for Medicare and Medicaid**

Services, funds in a covered individual's segregated account *may not be used for any other purpose.*¹
Failure to comply with the requirements of Section 1303 may result in decertification or civil monetary penalties. League members appreciate the intent of Senate Bill 947, but we also must be aware of federal guidelines and our inability to operate outside of those parameters.

We also argue that this legislation could be considered a taking of the carrier's property. The Fifth Amendment of the Constitution prohibits a state from taking property "without just compensation," even if there is a compelling state interest, such as protecting access to abortion care. As noted in Armstrong v. United States (1960), "The Fifth Amendment's [Takings Clause] . . . was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."

The League appreciates the opportunity to provide the aforementioned information on House Bill 1412. We are happy to answer any questions and provide further information as the committee considers this piece of legislation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew Celentano", with a long horizontal flourish extending to the right.

Matthew Celentano
Executive Director

cc: Members, House Health and Government Operations Committee

¹ Randy Pate, Director, Center for Consumer Information and Insurance Oversight, "CMS Bulletin Addressing Enforcement of Section 1303 of the Patient Protection and Affordable Care Act" (October 6, 2017).