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Bill # / Title: House Bill 1069 - Life and Health Insurance Policies and Annuity and Health Maintenance Organization Contracts - Discretionary Clauses - Prohibition

Committee: Senate Finance Committee

Position: Support

The Maryland Insurance Administration (MIA) appreciates the opportunity to share its support for House Bill 1069. As the Committee is likely aware, the bill has already unanimously passed out of the House.

Current Maryland law prohibits the use of discretionary clauses in disability insurance policies. If enacted, House Bill 1069 would extend this prohibition to include health insurance policies, life insurance policies, and annuity contracts. It also amends state law to ensure that these prohibitions are explicitly applied to health maintenance organizations as well.

Discretionary clauses are contract provisions that give an insurer discretionary authority to determine eligibility for benefits and to interpret the terms and provisions of the policies they issue. The use of these clauses creates a conflict of interest by giving carriers responsible for providing benefits to insureds the authority to decide what benefits are due. In the past, courts have often deferred to discretionary clauses when insureds have taken legal action against carriers for not honoring their policies. In effect, this means that insureds who purchase insurance policies with discretionary clauses can never be certain that they will be provided with the benefits as set forth in their policy.

In 2002, the National Association of Insurance Commissioners (NAIC) issued a proposed "model law" that would ban discretionary clauses in health insurance products, including policies issued in connection with ERISA plans. In 2004, the NAIC expanded this to include disability benefit policies. Since that time, twenty-five states have adopted some form of law or rule restricting or banning the use of discretionary clauses in insurance contracts.

If enacted, House Bill 1069 will prevent insurance carriers from solely adjudicating their own disputes, thereby promoting fair and unbiased resolution of issues related to health insurance benefits and disability income protection by eliminating discretionary clauses in policies.

For these reasons, the MIA urges a favorable committee report on House Bill 1069 and thanks the committee for the opportunity to share its support.