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April 30, 2009

The Honorable Martin J. O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: Senate Bill 79 and House Bills 32, 39, and 235

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 79, "Health Insurance - Reform," House Bill 32, "Health Insurance - Limitations on Preexisting Conditions Provisions - Individual Health Benefit Plans," House Bill 39, "Health Insurance - Out-of-State Association Contracts - Regulation," and House Bill 235, "Health Insurance - Rescission of Contracts and Certificates - Restrictions." We write to discuss the interactions between the bills.

Senate Bill 79 combines the features of House Bills 32, 39 and 235 into a single bill. The substantive provisions of House Bill 32 appear on page 3, line 1 to page 5, line 27 of Senate Bill 79. The substantive provisions of House Bill 39 appear on page 7, line 20 to page 10, line 8 of Senate Bill 79. The substantive provisions of House Bill 235 appear on page 10, line 9 to page 11 line 3 of Senate Bill 79. In addition, Senate Bill 79 contains an uncodified section requiring the Maryland Insurance Administration to study options to raise or define medical loss ratio requirements in the individual, small group, and large group health insurance markets. This provision does not appear in any of the House bills.

Senate Bill 79 and House Bill 39 define the term "evidence of individual insurability" for purposes of the provisions relating to out-of-state association contracts as follows:

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“Evidence of individual insurability” means medical or other information that indicates health status, used to determine whether coverage of an individual is to be:

(i) issued or denied; or

(ii) issued with or without an exclusionary rider.

Senate Bill 79, page 7, line 28 to page 8, line 2 and House Bill 39, page 2, lines 14-18.

House Bill 235 uses the same definition in the context of the provisions relating to rescission of contracts and certificates. Senate Bill 79, on the other hand, defines the term in that context by reference to the earlier definition, stating:

“Evidence of individual insurability” has the meaning stated in § 15-1105 of this title.

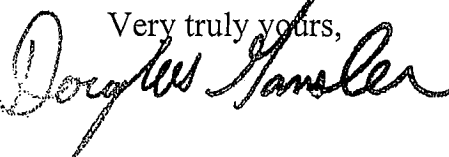
The effect is the same whether the language is repeated, or included by cross-reference.¹

Each of the four bills has an uncodified section stating that it applies to all policies issued, delivered, or renewed on or after October 1, 2009. There are certain differences between the provisions. In Senate Bill 79 and House Bill 235, the provision lists policies, contracts, certificates, and health benefit plans, while in House Bills 32 and 39 only policies, contracts, and health benefit plans are mentioned. It is our view that the intent is clear regardless of whether certificates are expressly mentioned, and that the provision sets out what would likely be the case in any event. The provision in House Bill 32 and 235 refers to policies issued “in the State,” while the provisions in Senate Bill 79 and House Bill 39 do not have this language. It is clear, however, that the State law would not ordinarily reach policies issued in other states.

¹ Senate Bill 79 makes the section relating to out-of-state association contracts § 15-1105 and the section relating to rescission of contracts and certificates § 15-1106, while House Bill 39 and House Bill 235 labels each § 15-1105 because each bill has only one new section. The codifier will change the numeration if only the House Bills are signed.

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For the above reasons, it is our view that any or all of the bills may be signed into law.

Very truly yours,


Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Thomas M. Middleton
The Honorable Sue Kullen
The Honorable B. Daniel Riley
The Honorable Shawn Z. Tarrant
The Honorable John P. McDonough
Joseph Bryce
Karl Aro