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January 14, 2020

To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: Patricia F. O'Connor, Health Education and Advocacy Unit

Re: Senate Bill 112 (Health Insurance-Health Information-Disclosures Between Carriers): Support as Amended

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports Senate Bill 112 as amended in the version submitted to the Committee by the Maryland Insurance Administration (MIA) today. The HEAU had proposed the amendments set forth on page 2 for the reasons stated below.

The original bill would *require* a carrier, upon request, to disclose protected health information in the form of case management and care coordination records regarding a former enrollee to the current carrier, without an affirmative authorization from the individual. HIPAA *permits* these types of disclosures but does not require them. We are concerned that the lack of voluntary and informed consent to participation in carriers' case management and care coordination activities, and to disclosure of the records to a new carrier, could, if required, result in impermissible reductions of HIPAA's privacy protections notwithstanding any increase in operational efficiency that may occur.

The facts of an HEAU complaint exemplify some of these issues. The mother of a ten-year-old child with a rare genetic condition complained that a third party (hired by the carrier) billed for nurse case manager services the mother had declined. Moreover, before the mother was even offered the services, the nurse case manager obtained the child's medical record without the mother's knowledge or consent. Privacy violations like these risk being facilitated by mandatory disclosures without authorization.

We believe privacy and operational efficiency are balanced and served by obtaining a HIPAA compliant authorization from the individual; limiting the authorized disclosure to case management and care coordination records; limiting their use to case management and care

coordination activities; and requiring the carrier to provide the individual access to the disclosed records upon request, as set forth in the amended bill. The HEAU's support is for the amended bill in its current form.

cc: Members of the Finance Committee

HEAU Amendments to Senate Bill 112 – Health Insurance- Health Information –
Disclosures Between Carriers (First Reading Bill)

Amendment #1

On page 1, delete lines 19-20

Amendment #2

On page 2, in line 4, after “FOR”, delete “HEALTH CARE OPERATIONS ACTIVITIES” and insert “CASE MANAGEMENT AND CARE COORDINATION ACTIVITIES”

Amendment #3

On page 2, in line 9, after “INFORMATION”, delete “RELATES TO THE RELATIONSHIP BETWEEN THE INDIVIDUAL WHO IS THE SUBJECT OF THE PROTECTED HEALTH INFORMATION AND THE CARRIER THAT RECEIVES THE PROTECTED HEALTH INFORMATION; AND”, and insert “PERTAINS TO SUCH RELATIONSHIP”

Amendment #4

On page 2, in line 14, after “INFORMATION”, delete through line 16, and insert “IN CASE MANAGEMENT AND CARE COORDINATION RECORDS OF THE INDIVIDUAL WHO IS THE SUBJECT OF THE PROTECTED HEALTH INFORMATION; AND (4) THE INDIVIDUAL HAS PROVIDED THE CARRIER WITH AN AUTHORIZATION THAT COMPLIES WITH 45 CFR 164.508(C).”

Amendment #5

On page 2, in line 30, before “SECTION”, insert “(D) THE CARRIER SHALL PROVIDE THE INDIVIDUAL ACCESS TO THE DISCLOSED RECORDS UPON REQUEST.”