

State of Maryland

Commission on Civil Rights

“Our vision is to have a State that is free from any trace of unlawful discrimination.”



Officers

Alvin O. Gillard, Executive Director
Cleveland L. Horton II, Deputy Director
Nicolette Young, Assistant Director
Glendora C. Hughes, General Counsel

Governor
Larry Hogan
Lt. Governor
Boyd K. Rutherford
Commission Chairperson
Gary C. Norman, Esq.
Commission Vice Chairperson
Roberto N. Allen, Esq.
Commissioners
Allison U. Dichoso, Esq.
Hayden B. Duke
Eileen M. Levitt, SPHR, SHRM-SCP
Rabbi Binyamin Marwick
Gina McKnight-Smith, PharmD, MBA
Shawn M. Wright, Esq.

February 26, 2020

Senate Bill 738 – Health Care Providers and Health Benefit Plans – Discrimination in Provision of Services Position: Support with Amendments

Dear Chairperson Kelley, Vice Chairperson Feldman, and Members of the Senate Finance Committee:

The Maryland Commission on Civil Rights (“MCCR”; “The Commission”) is the State agency responsible for the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and state contracts based upon race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, and physical and mental disability.

Senate Bill 738 prohibits a hospital or relation institution from refusing, withholding from, or denying an individual access to medical services, or otherwise discriminating against any individual with respect to their medical care because of the patient’s race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. It also prohibits a health care provider licensed or regulated by the Maryland Department of Health (“MDH”) or a provider of health benefit plans under the authority of the Maryland Insurance Administration (“MIA”) from discriminating against an individual because of the aforementioned protected classes.

Generally, MCCR supports expanding health care anti-discrimination protections to include in the Health General Article all of the same protected classes found in Title 20 of the State Government Article (“SGA Title 20”). However, MCCR does not have the resources or expertise to be able to investigate claims of unlawful discrimination by a health care provider or an insurer. While MCCR does have jurisdiction to take complaints of alleged unlawful discrimination regarding access to a health care institutions or related facilities, MCCR has neither jurisdiction nor expertise with respect to the necessity or quality of medical services and care. It is MCCR’s position that the agencies responsible for licensing and regulating these entities currently have the necessary resources and expertise to investigate complaints filed with them. Accordingly, MCCR respectfully requests that the bill incorporate amendments to mitigate any fiscal and operational impact on the Commission.

Current Maryland law found in §2-202 of the Insurance Article creates a structure by which the MIA and MCCR have concurrent jurisdiction over complaints of alleged discrimination in underwriting and rate-setting practices. In order to access relief, Complainants file with the MIA. MIA, as the primary regulator of the insurance provider, conducts an investigation and issues a finding in the matter. If the Complainant is alleging discrimination, the MIA shares the results of their investigation with MCCR. The Commission then reviews the investigation, and follows-up as needed to issue a finding. This concurrent jurisdiction guarantees that each respective agency is equipped with the information needed to enforce their respective statutes, while affording aggrieved parties their rights under Maryland law.

MCCR respectfully requests that the Maryland General Assembly adopt amendments to SB738 to create concurrent jurisdiction between MCCR with both the MDH and the MIA. These amendments would ensure the appropriate regulatory or oversight entity within each agency would use their expertise to receive and investigate complaints, while sharing with MCCR the results of their investigations that contain allegations of unlawful discrimination under SB738's provisions.

Without these amendments, MCCR's statutory jurisdiction is expanded to include investigating discrimination complaints about health care delivery and access to health insurance, requiring the agency to receive additional resources from the State. These resources will be needed to ensure that current case processing times are not adversely impacted. Commission staff are already experiencing high case inventories due to an increase in complaint intakes over the past few years. Any increase in case inventories under SB738 will result in investigations taking longer to complete. This is of particular concern to MCCR because it has the potential to hinder the agency's ability to satisfy contractual obligations with the U.S. Equal Employment Opportunity Commission ("EEOC") and the U.S. Department of Housing & Urban Development ("HUD"). MCCR receives approximately 25% of its annual budget from federal funds. Any loss of federal funds would need to be supplemented by the State, or the agency would need to begin cutting vital investigative staff in order to stay within its annual allowance. Indeed, any increase in case processing times or decrease in investigative staff is to the detriment of Complainants and Respondents currently accessing MCCR services seeking resolutions to allegations of unlawful employment, housing, public accommodations, or state contract discrimination.

For these reasons, MCCR urges the Committee to vote favorably with amendments on Senate Bill 738. The Maryland Commission on Civil Rights looks forward to the continued opportunity to work with you to promote and improve civil rights in Maryland.