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SB 738

February 26, 2020

TO: Members of the Senate Finance Committee

FROM: Nicholas Blendy, Deputy Director of Government Relations

RE: Senate Bill 738 – Health Care Providers and Health Benefit Plans -
Discrimination in Provision of Services

POSITION: SUPPORT WITH AMENDMENT

Chair Kelley, Vice-Chair Feldman, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** Senate Bill (SB) 738 **with amendment**.

Senate Bill 738 aims to protect vulnerable populations by requiring hospitals and related institutions to provide medical services to individuals regardless of certain immutable characteristics. Additionally, the bill alters the characteristics of an individual on the basis of which hospitals and related institutions are prohibited from discriminating against the individual in certain actions; and, provides that certain provisions of the Act do not prohibit certain persons from refusing, withholding from, or denying any person services for certain reasons except under certain circumstances

Reflecting and expanding on the Americans with Disabilities Act, the bill would seek to protect individuals based on the following characteristics: sex, sexual orientation, gender identity, marital status, religion, age, disability, or genetic information. Further, SB 738 would broaden and clarify the language of Section 19-355 of the Health Article to include the withholding or denial of medical services based on the aforementioned characteristics.

Recently, the Trump Administration promulgated rules that will significantly harm access to fundamental, patient-centered health services across the country. Perhaps

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the most negatively impactful would be “Protecting Statutory Conscience in Rights in Health Care,” commonly known as the “conscience clause” rule.

This policy poses distinctive and significant harm to the health of Baltimore City’s, and the State’s, residents. Without the protections codified in SB 738, many of Baltimore City’s most vulnerable communities will be at risk of losing access to crucial health services and programs.

Conscience Clause

The “conscience clause” allows hospital administrative staff, along with healthcare providers and organizations, to withhold services, information, and referrals in the case of religious or moral opposition.¹ By sanctioning religious or moral objections, the Trump Administration is potentially sanctioning discrimination against patients, especially those in our most vulnerable communities. LGBTQ individuals in Baltimore and around Maryland could be denied care for important health services simply because of their sexual orientation or gender identity.

A 2015 survey found that 29% of transgender individuals nationally had reported an incident where a provider refused to see them because of their gender identity.² Another study found that 18.4% of LGBTQ individuals avoided doctor’s offices because of discrimination.³ This type of routine discrimination severely limits healthcare utilization, deepening already significant health disparities. Compared to heterosexual individuals, LGBTQ individuals have higher rates of chronic illness, sexually transmitted diseases, and behavioral health conditions.⁴

Potential Amendment

BCA offers the following friendly amendment to SB 738:

- on page 2, in line 16, between “color,” and “**RELIGION,**” include “**CITIZENSHIP,**”

¹ Sonfield, A. (2018, March 21). How The Administration’s Proposed ‘Conscience’ Rule Undermines Reproductive

Health And Patient Care. Retrieved January 17, 2019. from <https://www.healthaffairs.org/doi/10.1377/hblog20180316.871660/full/>

² Mirza, S., Rooney, C. (2018, January 18). Discrimination Prevents LGBTQ People from Accessing Health Care. Retrieved January 17, 2019. from <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>

³ Singh, S., Durso, L. (2017, May 2). Widespread Discrimination Continues to Shape LGBT People’s Lives in Both Subtle and Significant Ways. Retrieved January 17, 2019. from <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>

⁴ Kates, J. et al. (2018, May). Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender Individuals in the U.S. Retrieved January 17, 2019. from <http://files.kff.org/attachment/Issue-Brief-Health-and-Access-to-Care-and-Coverage-for-LGBT-Individuals-in-the-US>

In addition to the “conscience clause” rule, the Trump Administration promulgated 83 FR 51114, commonly known as the “public charge” rule, targeting another vulnerable group facing difficulties regarding access to medical services, documented immigrant residents. The rule would make green card access more difficult for any immigrant who has used public assistance services such as Medicaid and Supplemental Nutrition Assistance Program (“SNAP”). A Kaiser Family Foundation report found that 94% of noncitizens nationally have at least one factor that could potentially count against them in a public charge determination.⁵ Consequently, the report predicted that the rule has the potential to cause 15% to 35% of households with a noncitizen to disenroll from Medicaid and CHIP, meaning anywhere from 2.1 to 4.9 million Medicaid/CHIP enrollees will be left without coverage.⁶

In Baltimore City, immigrant families avail themselves of many BCHD-run programs and services including vision screenings and treatments in schools, school-based health centers and suites, family planning and sexually-transmitted diseases and infections (“STDs/STIs”) services, dental clinics, meals for seniors, and home visits for infant care, all of which could be construed as “public benefits.” Many children from immigrant families also rely on school-based health centers for routine vaccinations for diseases like measles, mumps, and various STDS. By avoiding these vital programs, many immigrant parents could be jeopardizing their family’s well-being as well as their own livelihoods. This is especially pertinent to both the City’s and State’s response to the Coronavirus.

The rule’s potential impact on immigration status may also dampen future enrollment of immigrants in public assistance, thereby limiting use of routine preventative and primary healthcare.⁷ Including protections in HB 1120 against discrimination based on citizenship status will help allay the fears of our immigrant communities.

SB 738 vs. Patient Bill of Rights

It is our belief that 2019’s Patient Bill of Rights (HB 145/SB 301) provided great relief to the groups discussed above, and that SB 738 could help bolster its provisions. Whereas the former requires reporting to the Maryland Department of Health’s Office of Healthcare Quality (“OHQ”), the latter would create a cause of action enforceable by the Maryland Commission on Civil Rights (“CCR”), further empowering individuals who have suffered discrimination. Moreover, SB 738 expands the amount of protected classes to effectively mirror the Patient Bill of Rights, thereby allowing for parallel enforcement by OHQ and CCR.

⁵ Artiga, S., Garfield, R., Damico, A. (2018, October). Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid. Retrieved January 25th, 2019. <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>

⁶ Ibid.

⁷ Parmet, W. (2018, September 27). The Health Impact Of The Proposed Public Charge Rules. Retrieved January 17, 2019. from <https://www.healthaffairs.org/doi/10.1377/hblog20180927.100295/full/>

Altogether, SB 738 proactively codifies patient protections to ensure that no matter who you are, who you love, or what type of care you seek; your access to quality, affordable healthcare is never compromised. In Baltimore, this legislation will help insulate our city's vulnerable communities from politically motivated attacks on their health. It would help slow disenrollment from public benefits, promote continued healthcare utilization, and defend access to necessary health services. SB 738 is a necessary step towards safeguarding healthcare as a fundamental and apolitical human right for Marylanders.

We respectfully request a **favorable with amendment** report on Senate Bill 738.