



February 5, 2021

The Honorable Dereck E. Davis
House Economic Matters
Room 231 House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: Letter of Information— House Bill 581 — Labor and Employment - Employment Standards During an Emergency (Maryland Essential Workers' Protection Act)

Dear Chair Davis:

The Maryland Health Benefit Exchange (MHBE) respectfully submits this letter of information for House Bill (HB) 581 – Labor and Employment - Employment Standards During an Emergency (Maryland Essential Workers' Protection Act). HB 581 would require the MHBE to provide for a special enrollment period (SEP) for health insurance coverage for certain essential workers during certain emergencies. The MHBE supports the opportunity to provide coverage for as many individuals as possible, particularly during emergencies, but would like to take the opportunity to provide additional information on the agency's policies and procedures to clarify matters with the legislation, as proposed.

The statutory authority already exists for the MHBE to open SEPs under "exceptional circumstances." Following the Governor's declaration of a state of emergency on March 5, 2020, the agency opened a COVID-SEP to all uninsured Maryland residents. The SEP was extended several times throughout the course of the pandemic and remains in effect. Nearly 107,000 Marylanders have enrolled in health coverage through the SEP, nearly 35,000 in private health plans and 72,000 in Medicaid.¹

Moreover, if an emergency were declared, it would generally be more operationally efficient to open an SEP for all uninsured individuals in the affected area – rather than only essential workers – to simplify public messaging regarding SEP availability and streamline the enrollment experience. The legislation does not state if the MHBE is required to verify if an individual is considered an "essential worker." If verification beyond self-attestation were required, it would be an added barrier to enrollment and an additional operational expense to modify the Maryland Health Connection system.

The MHBE also wishes to make the General Assembly aware that if an employer pays an employee's individual market plan premium, that payment may be considered taxable income for the employee. However, the federal government has established two health reimbursement arrangements (HRAs), Qualified Small Employer HRAs and Individual Coverage HRAs, as tax-advantaged vehicles for employers to pay an employee's individual market plan premiums. The General Assembly may want to consult tax and benefit administrator experts on the potential implications of employers paying individual market premiums and may want to make sure that employers and employees are aware of potential tax consequences of, and vehicles for, employers paying individual market premiums. It is also important to note that it may be more financially beneficial for the employee - depending on the employee's financial situation and their eligibility for Medicaid, advanced premium tax credits, and/or cost-sharing reductions - if the employer does not contribute to their health coverage. The MHBE advises that the language be modified to create an option for employees to opt out of employer contributions.

The MHBE staff can be made available to provide additional assistance on the implications of HB 581. For further discussions or questions please contact Johanna Fabian-Marks, Director of Policy and Plan Management at johanna.fabian-marks@maryland.gov.

Sincerely,

A handwritten signature in black ink that reads "Michele Eberle".

Michele Eberle
Executive Director

¹ Maryland Health Connection Data Report, December 31, 2020, https://www.marylandhbe.com/wp-content/uploads/2021/01/Executive-Report_12312020.pdf