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**TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
SENATE FINANCE**

FEBRUARY 17, 2021

SENATE BILL 543 - INSURANCE - HEALTH CARE SHARING MINISTRIES - EXEMPTION

POSITION: LETTER OF INFORMATION

Thank you for the opportunity to provide written comments regarding Senate Bill 543. Senate Bill 543 amends §1-202 of the Insurance Article by adding a new (a)(6) which would exempt from the Maryland Insurance Administration's (MIA) regulation, all health care sharing ministries as defined in 26 USC §5000A(d)(2)(B)(ii).

In 1995, the General Assembly recognized the unique role of health care sharing ministries and created an exemption from insurance regulation for a "voluntary noncontractual religious publication" if the entity could meet 12 itemized criteria. See Md. Code Ann. Ins. Art. §1-202(a)(4). The 12 criteria identified and defined those particular characteristics of health care sharing ministries which distinguished them from traditional insurers, thereby justifying the exemption from state regulatory laws that are designed to protect consumers with respect to health insurance and health insurers.

Through a cross reference to the Affordable Care Act (ACA), Senate Bill 543 eliminates the application of the 12 criteria for those entities that meet the 5 criteria adopted by the ACA to define health care sharing ministries for certain purposes under the ACA. The 5 requirements of the federal statute are:

- (ii) The term "health care sharing ministry" means an organization—
 - (I) which is described in section 501(c)(3) and is exempt from taxation under section 501(a),

- (II) members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed,
- (III) members of which retain membership even after they develop a medical condition,
- (IV) which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999, and
- (V) which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

Under the ACA, members of health sharing ministries that meet the 5 ACA criteria are exempt from the ACA's minimum coverage requirement. Thus, individuals who secure health coverage from an entity that meets the 5 ACA criteria would not be required to pay a tax penalty for failing to maintain essential coverage; e.g. the "individual mandate."

A health care sharing ministry that meets the 5 ACA criteria may also be exempt from certain provisions of the ACA under § 1321(d) of the ACA. However, the federal law does not state that it preempts regulatory oversight of these entities by the individual states or address the extent to which such entities might be considered to be insurance under the law of any state. The 5 ACA criteria were not established or intended to determine what distinguishes a health sharing ministry from an insurer for purposes of state regulatory oversight and consumer protection. Nor does the ACA establish any level of federal oversight for entities that meet the 5 ACA characteristics.

The MIA is concerned with the sufficiency of the 5 factors under the federal law as standards for justifying the exemption of such entities from all regulatory oversight, accountability, and consumer protection measures. The only criteria that the ACA identifies that relate to the nature of the entity are (ii) and (iii) which require that members share a core set of ethical or religious beliefs, share health care expenses in accordance with those beliefs, and do not exclude persons from membership after they develop a medical condition. Senate Bill 543 as drafted would permit a health care sharing ministry that meets the minimalist federal definition to operate exactly like a health insurer in nearly all respects of its operations with impunity, exempt from all insurance regulatory laws and requirements and with no oversight including even the most fundamental financial solvency oversight.

While the MIA does not have a position on Senate Bill 543, the MIA is deeply concerned with the potential for harm to consumers if the scope of entities exempted from the Insurance Article is broadened to the extent proposed therein. We believe that the Committee should closely consider what are the characteristics of an entity operating as a health care sharing ministry that should exist in order to justify the exemption of that entity from regulatory oversight as they further discuss Senate Bill 543.