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March 3, 2021

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

From: The Office of the Attorney General, Health Education and Advocacy Unit

Re: Senate Bill 685 (Insurance Law- Application to Direct Primary Care Agreements- Exclusion): Letter of Concern

The pandemic is causing financial crises for patients and their families in Maryland, and is straining the resources of state, county and local governments. Economic modeling regarding whether and when Maryland's economy may return to its pre-pandemic status, or at least improve, is contingent on variable factors that this legislature is not always able to control. The HEAU believes, however, that the legislature can control unjustifiable risks to maintaining the affordable, accessible health care that has been increasingly available in Maryland by choosing not to create new risks in the way this bill threatens to do, now and in the future. On behalf of consumers, we are seriously concerned about the risks of financial and physical harm to patients if the Direct Primary Care Agreements (DPCAs) contemplated under Senate Bill 685 are allowed in Maryland.

We submit these basic protections are required, at a minimum, to avoid creating unjustifiable risks of consumer harm:

- 1) **Protect consumers in the individual market-** The period of the pandemic and its aftermath is an especially bad time for patients to be placed at risk from less expensive, poorly regulated products that look like but are not health insurance subject to federal and state law protections against nonperformance, discrimination, insolvency and other problems that historically have occurred with unregulated health insurance plans. We believe patients would be best

served now and in the future by strengthening the supports for the individual market instead of confusing them with cheaper products that offer minimal coverage at increased risk of nonperformance and insolvency.

- 2) **Comprehensive regulatory oversight-** Given state budget constraints for the foreseeable future, patients experiencing problems with DPCAs are at risk for falling between regulatory cracks. There need to be clear, explicit responsibilities defined for the entity or entities responsible for regulatory and enforcement authority over the DPCA agreements and additional financial resources allocated to undertake those efforts. It appears, as drafted, that the Maryland Insurance Administration would have concurrent regulatory and enforcement authority with the respective health occupation boards regarding licensed physicians and other providers who fail to perform under or wrongfully terminate DPCAs. For instance, the bill does not expressly address patient abandonment concerns arising out of the physician's right to terminate the DPCA.

The HEAU may attempt to mediate DPCA-related billing disputes like other disputes we currently mediate, but without waiving our opposition to the bill, we respectfully submit that page 2, line 21 of the bill should be amended and cover HEAU's requests for information from health care providers including primary care providers. Otherwise HEAU's authority to receive information from healthcare providers would appear to be limited to DPCA providers.

- 3) **Antidiscrimination protections-** Though the healthcare antidiscrimination protections enacted last session clearly apply to DPCAs and cannot be waived as a matter of contract, this should be stated expressly. In addition, the updated antidiscrimination protections added last session to the Insurance Article should expressly apply to DPCAs. We are concerned that the very consumers who will be drawn to the promise of DPCAs, i.e., potentially unlimited access to a primary care provider for fees that cost less than their out-of-pocket maximum under their health insurance, are not a match for the DPCA business model and would be declined as patients, or if accepted, terminated unilaterally.
- 4) **Rate setting protections-** The MIA is experienced in actuarial evaluations of capitation rates charged by HMOs and in insurance rates generally. We believe there should be some verification by the MIA that the fees being charged in exchange for the services promised by DPCAs have some actuarial validity in terms of market value and deliverability without risk of insolvency. Alternatively, bonds should be required in appropriate amounts (health clubs in Maryland that collect advance fees have bonding requirements). There also should be specific reimbursement requirements when patients are entitled to the return of some or all of their prepaid fees. At a minimum, fees should be required to be reasonable.

- 5) **Transparency about services and costs compared to health insurance coverage-** The bill requires the Direct Primary Care Agreement to describe the direct primary care services to be provided in exchange for the payment of a periodic fee but does not require an itemization of the fees for those services. At a minimum, these fees must be itemized so that consumers will be able to calculate the amount of unearned funds that must be returned to them on termination of the agreement. It also requires a description of “any ongoing care” for which additional fees will be charged and the fees charged for those services. While we object to additional fees, any allowed fees should be itemized to enable consumers to make fully informed decisions about the costs of services provided under DPCA’s vs. traditional insurance plans. Moreover, any comparison of DPCA fees to traditional market prices should not be misleading. The information should be provided in a way that enables patients to determine whether their costs under the DPCA will be less than, the same as, or more than their out-of-pocket costs for the same services under their health insurance. For example, non-grandfathered commercial and self-funded health plans must cover annual preventive exams provided by in-network providers with no out-of-pocket costs; that fact should be acknowledged by DPCAs, instead of suggesting patients must pay those costs out-of-pocket. *See for example,* <https://evolvemedicalclinics.com/wp-content/uploads/Evolve-DTC-Membership-Contract.pdf> (showing \$353 national market price for annual physical exam and \$50 for flu shots).
- 6) **Marketing restrictions-** DPCAs should not be sold by individuals licensed under the Insurance Article to sell health insurance products unless DPCAs are made subject to the same regulatory processes as health insurance products. The current restrictions on physician advertising should be evaluated and strengthened to reflect the risks of DPCAs, and other titles in the Health Occupations Article may need to be added or strengthened, also.

We are fundamentally concerned about the fiduciary nature of the physician/patient relationship and the imbalance of power in the relationship, and the lack of patient protections in the bill that might mitigate HEAU’s concerns. Regulations enacted by the MIA and the Board of Physicians in consultation with the Consumer Protection Division would be essential in establishing standards and remedial processes to protect consumers from unethical or unfair business practices by DPCAs.

Thank you for the opportunity to provide information to the Committee.

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