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TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE

JANUARY 20, 2021

HOUSE BILL 167 – HEALTH INSURANCE - OUT-OF-POCKET MAXIMUMS AND COST-SHARING REQUIREMENTS - CALCULATION

POSITION: LETTER OF INFORMATION

Thank you for the opportunity to provide written comments regarding House Bill 167. House Bill 167 amends § 15-118 of the Insurance Article and requires certain payments to be applied to a member's cost-sharing or out of pocket maximum "to the extent authorized by federal law" in new subsection (d). The MIA offers the following technical comments regarding the impact of this language on the scope of enforcement.

The words "to the extent authorized by federal law" can be read to limit the application of the law to circumstances in which the federal law has expressly addressed and authorized the consideration of third-party payments. The circumstances in with the federal law expressly addresses and authorizes the application of a third-party payment to a member's cost sharing obligation are limited. Currently, 45 CFR §156.1250, specifically requires or "authorizes" certain third-party payments to be accepted by carriers for ACA plans. The regulation reads as follows:

> *Issuers offering individual market QHPs, including stand-alone dental plans, and their downstream entities, must accept premium and cost-sharing payments for the QHPs from the following third-party entities from plan enrollees (in the case of a downstream entity, to the extent the entity routinely collects premiums or cost sharing):*
>
> *(a) A Ryan White HIV/AIDS Program under title XXVI of the Public Health Service Act;*

(b) An Indian tribe, tribal organization, or urban Indian organization; and

(c) A local, State, or Federal government program, including a grantee directed by a government program to make payments on its behalf.

Additionally, 45 CFR § 156.130 provides:

(h) Use of direct support offered by drug manufacturers. Notwithstanding any other provision of this section, and to the extent consistent with State law, amounts paid toward reducing the cost sharing incurred by an enrollee using any form of direct support offered by drug manufacturers for specific prescription drugs may be, but are not required to be, counted toward the annual limitation on cost sharing, as defined in paragraph (a) of this section.

The above-referenced federal regulations are the only sections of federal law or regulation that expressly allow or "authorize" third party payments to be applied to a member's cost sharing. In all other circumstances for which the federal regulations are silent, carriers are currently permitted to determine on their own whether or not to apply third party payments toward a member's cost-sharing or out of pocket maximums.

While the Maryland Insurance Administration does not have a policy position on House Bill 167, we write to advise the Committee that if the Committee's intent is to more broadly require carriers to apply third-party payments to a member's cost-sharing or out of pocket maximum, unless *prohibited* by federal law, the current language does not clearly state that and creates the basis for push back in enforcement. If the Committee's intent is indeed broader, the Committee may wish to consider whether "to the extent not prohibited by federal law" is more appropriate wording than "to the extent authorized by federal law."