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TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
SENATE FINANCE COMMITTEE

JANUARY 19, 2022

SENATE BILL 167 – INSURANCE - CLAIM PAYMENT - CLARIFICATION

POSITION: SUPPORT

Thank you for the opportunity to provide written comments regarding Senate Bill 167.

SB 167 amends §§4-113 and 27-305 of the Insurance Article to clarify that if the Maryland Insurance Administration (MIA) finds that an insurance company, a nonprofit health service plan, or a health maintenance organization (collectively known as carriers) has violated state law by failing to pay a claim or otherwise fulfill its contractual obligations, the remedies available to the MIA include the authority to require that company to pay the claim or fulfill its contractual obligation to the insured. The bill also authorizes the MIA Commissioner, on finding a violation of unfair claim settlement practices, to require a carrier to provide a payment that has been denied improperly.

The current statutory law states that the MIA may require a carrier to "make restitution" to a claimant who has suffered "financial injury" because of the violation. Certain carriers have taken the position that the payment of a claim is not "restitution," unless the policyholder advanced the claim payment out of pocket. Under this reading of "restitution," only a consumer who had the financial ability to pay for the amount denied and can provide proof of that payment is entitled to relief. If the claimant did not make a payment, or has lost the receipt, carriers have argued that they are not obligated to make the payment that was denied. This reading of the law would allow a carrier to benefit from its unlawful underpayment or denial of claims.

Currently, §§15-10A-04 and 15-10D-03 of the Insurance Article specifically state that if a violation is related to an adverse decision or coverage decision the MIA has authority to require

that a carrier fulfill its contractual obligations; provide health care services or payments that have been denied improperly; or take appropriate measures to restore its ability to provide health care services or payments that are provided under a contract. SB 167 seeks to make similar changes to the language in §§4-113 and 27-305 to have the same intended effect as the current language in §§15-10A-04 and 15-10D-03 to hold carriers responsible.

As an example, the MIA completed a lengthy and detailed market conduct investigation that revealed that reimbursement for certain mental health service claims were improperly and unlawfully reduced by 30%. The investigation addressed many claims that spanned the course of several years. The carrier argued that it was only required to correct its error and pay the 30% that was improperly withheld if the policyholder had actually paid the full provider charge (including the 30%) to the provider. In their view, if the provider accepted the improperly reduced charge and did not require the patient to pay the difference, neither the policyholder nor the provider was entitled to payment of the proper claim amount and the company was entitled to pocket the difference. According to the carrier, while the policyholder or provider might prevail and be entitled to damages in a lawsuit, the authority of the MIA is more limited. The MIA rejected this argument. Regardless of whether the policyholder paid the extra 30%, the policyholder's contract and Maryland law required the carrier to pay the 30%, so the amount was owed to the claimant. If the MIA had accepted this argument, the MIA's only recourse would have been to increase the administrative penalty against the carrier, which would not make the claimant whole. The MIA negotiated a consent agreement with the carrier, but the MIA's effort to obtain a favorable resolution for the consumers was significantly delayed, because the carrier refused to back down from its position for several months. SB 167 would validate the MIA's reading of the current statutes and preclude this argument in the future.

This issue does not arise solely in the context of health claims. For example, property and casualty insurance carriers have questioned the authority of the MIA to order payment of attorneys' fees to a policyholder where the MIA found that the insurer's ultimate denial of the claim was not arbitrary and capricious, but that the carrier breached its contract by failing to pay defense costs. The duty to defend is broader than the duty to indemnify and is a separate contractual obligation under the policy. A refusal to defend may be arbitrary and capricious, thereby violating §27-303, which prohibits a carrier from refusing to pay a claim for an arbitrary or capricious reason.

It is important to note that SB 167 does not address or alter what constitutes a violation of the Insurance Article and does not address or alter the standard of review. It simply clarifies that when a breach occurs that is a violation of the Insurance Article, the remedies available to the MIA Commissioner include requiring the carrier to fulfill its obligations in accordance with their insureds' contracts and applicable law. SB 167 only clarifies the Commissioner's existing authority, so there should be no substantive impact to industry and consumers, other than allowing certain disputes to be resolved more promptly without unnecessary delays over negotiations with carriers or the need to wait for the dispute to be settled at a hearing. SB 167, if enacted, will provide direct relief to the consumer rather than simply having the Commissioner impose higher monetary penalties on the carrier.

In closing, for the reasons explained above, the MIA supports SB 167, and urges the Committee to give it a favorable report as an important consumer protection.