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**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

February 1, 2022

To: The Honorable Shane E. Pendergrass  
Chair, Health and Government Operations Committee

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

Re: House Bill 247 (Insurance - Medicare Supplement Policy Plans - Open Enrollment Period Following Birthday): Support

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports House Bill 247 because the bill adds protections from medical underwriting for Medicare enrollees who want to change Medicare supplement policy plans more than 6 months after they first enroll in Medicare, which is the current protected period. Supplemental plan enrollees who currently attempt to change plans more than 6 months after initial enrollment may be denied coverage, or charged higher premiums, on the basis of medical underwriting, effectively locking them into a plan that may no longer meet their needs or that has become unaffordable. This bill provides that a carrier must make available supplemental plans with benefits that are equal to or less than the current plan's benefits, within 30 days after the birthday of an individual enrolled in a supplemental plan, also known as the Birthday Rule (the BR).

Carriers successfully opposed BR legislation introduced in previous sessions by contending that volatility and increased costs *could* result if the BR became law despite the fact that many states over time have enacted laws to allow Medigap plan transfers without medical underwriting.<sup>1</sup>

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<sup>1</sup> <http://files.kff.org/attachment/Issue-Brief-Medigap-Enrollment-and%20Consumer-Protections-Vary-Across-States> As of 2018, 4 states (NY, ME, MA, and CT) have continuous or annual guaranteed issue protections for Medigap. States may have qualifying life events which trigger guaranteed issue: 28 states guarantee Medigap in the event retiree benefits change; 9 states guarantee Medigap upon loss of Medicaid eligibility; 14 states have additional life qualifying events such as when the beneficiary's health plan changes its benefits or when a participating hospital leaves the network of a beneficiary's health plan. Maryland is among 16 states that only have the federal minimum standard.

The MIA's Office of Chief Actuary (OCA) found that "the data available to the OCA does not demonstrate that the adoption of the BR in Maryland would reduce competition and choice or introduce anti-selection and increase rates in the Maryland Medigap market overall."<sup>2</sup> The report further stated:<sup>3</sup>

From the MIA's perspective, the data reviewed suggests that the adoption of a BR in Maryland would not likely have a negative impact on competition and choice if measured in terms of the number of legal entities willing to write Medigap coverage in Maryland and would have a favorable impact on choice if measured in terms of the options available to individual enrollees. The data reviewed also suggests to the MIA that the BR is unlikely to introduce anti-selection features at a pool level that would result in higher overall premiums in the Maryland market. Rather, it appears that the BR would likely act to counter the renewal anti-selection that currently exists, because the sickest individuals cannot move to other plans, but the healthy can. Over time, this feature of the Medigap market has resulted in significant differences in loss experience between legal entities and, thus, significant differences in rates among legal entities for identical plans with identical benefits. The long-term impact of allowing enrollees to price shop without underwriting appears to be more concentrated rates and a more even distribution of risk across carriers and plans, as sicker individuals initially move to less expensive plans. Over the short- and long-terms, opponents of [the BR] contend that impacts to the pool rates could be double-digit, while those who favored [the BR] assert that the impact is more likely to be in the +/- 2% range. The OCA believes that the latter figure is better supported by the data.

Accordingly, we ask the committee to give the bill a favorable report.

cc: Sponsor

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<sup>2</sup> <https://insurance.maryland.gov/Consumer/Appeals%20and%20Grievances%20Reports/Birthday-Rule-Legislation-Report.pdf>, page 2.

<sup>3</sup>*Id.*, page 3.