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Date: January 31, 2023

Bill # / Title: Senate Bill 64 – HIV Prevention Drugs - Prescribing and Dispensing by Pharmacists and Insurance Requirements

Committee: Senate Finance Committee

Position: Letter of Information (LOI)

The Maryland Insurance Administration (MIA) appreciates the opportunity to provide the Committee with information regarding Senate Bill 64.

Senate Bill 64 prohibits step therapy, prior authorization, and cost sharing for pre-exposure and post-exposure prophylaxis and mandates coverage under the Maryland Medical Assistance Program for pre-exposure prophylaxis and post-exposure prophylaxis for HIV. The bill applies to insurers, nonprofit health service plans, HMOs, and MCOs, that provide prescription coverage. The bill also requires pharmacists prescribing and dispensing of post-exposure prophylaxis to complete a Board-approved training program on the usage of post-exposure prophylaxis and the availability of pre-exposure prophylaxis.

With respect to the provisions of the bill that amend the Insurance Article, the MIA notes that Senate Bill 64, as drafted, would completely exempt grandfathered plans (as defined by § 1251 of the Affordable Care Act (ACA)) from these prohibitions. If passed as proposed, grandfathered plans could require step therapy, could require prior authorization, and could apply cost sharing. The current law allows grandfathered plans to require step therapy and to apply cost sharing, but does not allow grandfathered plans to require prior authorization. Currently, a carrier is prohibited from applying a prior authorization requirement for a prescription drug used as post-exposure prophylaxis for the prevention of HIV under any type of insurance policy, including grandfathered plans. Hence, if enacted, Senate Bill 64, would enable grandfathered plans to impose a condition to coverage (prior authorization) that they are not now allowed to impose.

The MIA notes that the ACA preventive care mandate and cost-sharing prohibition is not applicable to grandfathered plans, so bills proposing cost-sharing prohibitions typically follow the ACA approach and allow grandfathered plans to continue to apply cost-sharing. If the actual intent is for the exemption for

grandfathered plans to apply only to the cost-sharing prohibition (which is consistent with most new cost-sharing prohibitions that have been proposed or enacted in Maryland in the ACA era), then the proposed language in new paragraph (a)(3) on page 7 should be revised to clarify that only the cost-sharing prohibitions in subsections (b) and (c) do not apply to grandfathered plans.

The MIA notes that neither the ACA nor existing state law require an exemption for grandfathered plans for any of the provisions of the bill. Therefore, if the intent is for all of the new requirements to apply to all plans, the grandfathered plan exemption may be removed entirely.

Likewise, the ACA does not prohibit an exemption for grandfathered plans for any of the provisions of the bill. Thus, exempting grandfathered plans from the proposed prior authorization ban for PrEP would purely be a policy decision. For context, the MIA notes that exempting grandfathered plans from the prior authorization ban may align more closely with the current ACA requirements for PrEP, which include a prohibition on carriers using reasonable medical management techniques to restrict access to these services, but which do not apply to grandfathered plans. The Maryland legislature took a similar approach in the past when codifying and expanding certain ACA requirements for contraceptives under Maryland law in § 15-826.1(c). On the other hand, there are various state-specific laws prohibiting prior authorization that do not include an exemption for grandfathered plans. See, for example, §§ 15-850, 15-851, and (existing) 15-858.

Thank you for the opportunity to provide this letter of information. The MIA is available to provide additional information and assistance to the Committee.