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To: The Honorable Melony Griffith  
Chair, Senate Finance Committee  
From: The Office of the Attorney General  
Re: SB0786 – Health – Reproductive Health Services – Protected Information and  
Insurance Requirements: **Letter of Support with Amendments**

The Office of the Attorney General writes in support of SB0786 with amendments to address concerns noted herein. This bill furthers Maryland's efforts to ensure high quality, affordable reproductive health services are available to Marylanders and shields the identifying information of anyone who obtains or provides reproductive health services in the state from out-of-state investigations that could threaten their privacy, safety, and liberty.

The bill proposes to amend certain sections of the General Provisions, Health, and Insurance articles to shield “legally protected health care data,” defined as “all reproductive health services, medications, and supplies related to the direct provision or support of the provision of care related to pregnancy, contraception, assisted reproduction, and abortion that is lawful in the state.” The bill also shields and defines a “protected medication record,” (identifying information regarding medication used in a medical abortion) and “protected services record” (identifying information related to the provision of legally protected healthcare).

The bill directs the Maryland Health Care Commission to adopt regulations to restrict the flow of data of patients who have obtained legally protected health care (LPHC), and to establish policies and standards to protect the confidentiality of patient and healthcare practitioner information related to LPHC. The bill also prohibits a dispenser from submitting information about any medication used for a medical abortion to the state designated exchange and prohibits a health information exchange from disclosing protected records to anyone outside the state, subject to criminal penalties, except for the adjudication of claims or to a specific treating provider with the patient's

written consent. Furthermore, the bill removes from disclosure through PIA requests the name or other identifying information related to an ambulatory surgery center or a surgical abortion facility or information relating to an investigation of a licensee or certificate holder regarding the provision of LPHC pending a final order.

We support the goals of this bill. Marylanders or others seeking legally protected reproductive healthcare in Maryland, and their healthcare providers, should not be subject to out-of-state investigations, harassment, or potential harm for exercising their rights to seek and provide LPHC. Those obtaining and providing such care legally in Maryland generally cannot do so without the creation of a medical record and having that information shared on a health information exchange. This bill seeks to prevent the flow of that information, which necessarily means such patients will lose the benefits afforded by having their information available to treating providers without written consent.

We have identified several concerns with the bill that we have discussed with the proponent and look forward to continuing to work on language to best balance the goals of this bill with the needs for appropriate information sharing. For example:

1. On page 2, lines 22-25, we do not support a PIA custodian denying identifying information about Ambulatory Surgery Centers or Surgical Abortion Facilities. We would support redacting the names of the owner, administrator, and medical director of each facility in light of the well-documented history of harassment and violence perpetrated against abortion providers across the country. However, an alternative method for service of process should be afforded to consumers.
2. On page 2, lines 32-33, we support the protection of home addresses if an alternative method for service of process is afforded.
3. On page 12, lines 1-2, we support having LPHC data restricted but believe the language could be read broadly to prevent the flow of any data about a patient receiving LPHC—not just the data related to the LPHC—from flowing. This provision is worthy of additional risk/benefit discussion.
4. On page 14, lines 5-6, we oppose this provision which would allow the sharing of information, without an authorization to an out-of-state investigator. We have been advised by the proponent that this was not intended.
5. On page 23, lines 12-13, we await a response from the proponent about the intent of this change in the Insurance article.

The Office of the Attorney General in concert with key stakeholders will continue to work on detailed language to clarify content and correct drafting errors in the bill. In the meantime, we urge the Committee to provide a favorable report for SB786. As the Committee is aware, a bill to enshrine reproductive freedom in the state's constitution is also working its way through the General Assembly. The U.S. Supreme Court's decision to roll back fundamental reproductive rights has divided the country – states like

Maryland where reproductive health rights are protected, and anti-abortion states who are now considering legislation in an attempt to extend the effect of their laws outside their own borders, including criminalizing abortion services provided in other states. It is vitally important to those who provide, support, or access reproductive healthcare in Maryland that we provide the highest possible guardrails for their safety, privacy, and liberty.