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Bill # / Title: Senate Bill 684 – Health Insurance – Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting 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 684.

House Bill 455, Chapter 211/Senate Bill 334, Chapter 212 of the Acts of 2020 created a new reporting requirement related to the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (“Parity Act”). Specifically, § 15-144 of the Insurance Article was enacted to require health insurance carriers to demonstrate compliance with the Parity Act by providing information to the MIA on Nonquantitative Treatment Limitations (“NQTLs”) and data related to health benefit plans offered in certain markets in the State. These landmark 2020 bills established Maryland as a national leader in Parity Act enforcement. Chapters 211 and 212 also required the MIA to submit an Interim Report to the General Assembly by December 1, 2023, summarizing the MIA’s findings after reviewing the required NQTL reports, and making recommendations related to necessary changes to the reporting and data requirements. The MIA’s Interim Report outlined various problems and challenges with the existing reporting process, and included eight specific recommendations for how to improve the efficiency and effectiveness of the process, in order to enable the MIA to reach substantive parity determinations more quickly.

The MIA appreciates that the intent of Senate Bill 684 is to implement the MIA’s recommendations from the Interim Report, and appreciates the efforts of the sponsor to improve access to mental health care for Maryland residents. However, the MIA would like to make the Committee aware that some of the language of the bill as introduced may not accomplish the desired goal of improving the effectiveness of the existing reporting requirements and ultimately increasing consumer access to mental health and substance use disorder treatment.

Over the past two years, the MIA engaged in a deliberative and painstaking process to review and analyze the 213 NQTL reports that were received from carriers in 2022, with each report covering 14 different

categories of NQTLs. Unfortunately, the reviews of these reports are ongoing and the MIA has not yet been able to reach substantive parity determinations due to repeated deficient submissions from carriers. The MIA has imposed significant fines on carriers, and provided detailed guidance on correcting the deficiencies. Despite this, carriers have been unable to provide complete documentation of the required analyses. The lessons learned from this experience informed the MIA's recommendations from the Interim Report, and it is important to consider the complexity of various issues related to the NQTL reports as the Committee determines the most appropriate statutory changes to make to the existing reporting requirements.

In addition to Senate Bill 684's cross file (HB 1074), a second bill seeking to implement the recommendations from the MIA's Interim Report (House Bill 1085) was also introduced in the House. The MIA was able to provide feedback on an early draft of House Bill 1085 before it was introduced to ensure the bill language accurately captured the intent of the MIA's recommendations. Unfortunately, the MIA was not able to provide similar feedback on Senate Bill 684 prior to the bill's introduction. We are, however, currently working with the sponsor to attempt to address several technical and substantive issues the MIA has identified with the current bill language and look forward to reconciling the conflicting provisions between the bills.

In order for the MIA's review of the NQTL reports to be thorough and effective, it is critical to reduce the volume of reports filed by carriers each year, and to grant the MIA additional enforcement tools in the event a carrier submits a deficient report. Additionally, we have provided the sponsor with suggestions to amend the bill to accomplish these goals, but we are not describing all of these issues in our written testimony for the sake of brevity.

Based on the MIA's own experience, and based on best practices from other federal and state regulators, it is clear that the regulatory reviews of the NQTL reports can be more effective and efficient if only a subset of NQTLs are reviewed each reporting period. This allows the regulator to perform an in-depth review of all the carrier's processes and data associated with a particular NQTL, rather than a performing cursory review of all of a carrier's NQTLs, which is unlikely to uncover violations. The MIA also identified that requiring carriers to report NQTLs at the product level, rather than the more granular plan level, will allow the MIA to collect more robust data samples and increase the efficiency of reviews, without sacrificing the integrity of the process, provided certain guardrails are included. Generally, regulators at the state and federal level have a choice between in-depth analysis with a goal of ensuring that carriers are complying with the most important aspects of the Parity Act, or a broad, cursory analysis that may permit a carrier to complete a reporting template without actually documenting compliance.

Unfortunately, Senate Bill 684 does not effectively improve the efficiency of reviewing the NQTL reports, because the recommendations from the MIA's Interim Report were not fully adopted in the bill. While Senate Bill 684 does reduce the number of NQTLs that the MIA must review each reporting period from 14 to 10, the bill *increases* the frequency of reporting from every other year to every year, and the bill still requires reporting at the plan level, instead of at the product level<sup>1</sup>. On balance, therefore, Senate Bill 684

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<sup>1</sup> An example of a product is an HMO that requires a referral to see a specialist, and does not cover routine out-of-network services. An example of a plan is that type of product with a \$1,000 deductible and \$30 copayments. The same type of product with a \$5,000 deductible and \$25 copayments would be a separate plan.

will actually significantly increase the time and personnel to continue to review these reports in depth, or create considerable strain on agency resources. In the MIA's experience, reviewing between 4 and 5 NQTLs biennially, focusing on the NQTLs with the greatest impact on consumer access to care, is a more effective approach to ensuring compliance. Although federal law requires carriers to perform analyses of all NQTLs, the federal Department of Labor asked for reports of only four NQTLs in its first two years, and will ask for six this year. Additionally, the NQTL reports should be submitted at the product level, as long as all plans within the product use the exact same processes when imposing NQTLs, such as using the same provider network. This will enable the MIA to accomplish more in a shorter time period, with fewer resources, while protecting consumers.

With respect to granting the MIA additional enforcement tools, the MIA is very pleased to see that Senate Bill 684 places the burden of persuasion on the carrier for any determinations related to compliance with the Parity Act. The bill also includes a provision expressly authorizing the MIA to impose a daily penalty for each day a carrier fails to submit information requested by the MIA to determine compliance with the Parity Act, and authorizes the MIA to require a carrier to cease the implementation of an NQTL if the MIA is unable to make a determination of compliance. While these enforcement tools would be helpful in certain situations, they would not be appropriate for all NQTLs, and House Bill 1085 includes additional enforcement tools that would assist the MIA in ensuring compliance. Specifically, when the MIA is unable to reach a parity determination due to a deficient filing from the carrier, House Bill 1085 authorizes the MIA to: charge the carrier for the cost of reviewing re-filed NQTL reports if the initial submission is deficient; cease *or modify* the conduct or practice; submit periodic data related to the conduct or practice; or establish specific quantitative thresholds for evidentiary standards and conduct a new comparative analysis. These additional remedies and enforcement tools are critical to effectively enforce the Parity Act without disrupting the market in a way that could ultimately harm consumers.

Thank you for the opportunity to provide this letter of information. The MIA is available to provide additional information and assistance to the Committee to ensure that Maryland remains a national leader in Parity Act enforcement.