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Date: February 26, 2025

Bill # / Title: Senate Bill 760 - Better Small Business Employee Benefit Act Of 2025

Committee: Senate Finance Committee

Position: Letter of Concern

The Maryland Insurance Administration (MIA) appreciates the opportunity to provide information regarding Senate Bill 760.

If enacted, Senate Bill 760 would exempt health benefit plans offered by professional employer organizations (PEOs) from having to comply with the laws governing Maryland's small group market. This is significant because the small group market includes unique protections for consumers and subjects insurance carriers to requirements that do not exist outside of the small and individual group markets. For example, large group plans can underwrite based on health status as well as a number of other factors. Large group plans are also not required to offer essential health benefits under federal law.

Currently, Maryland is one of three states in the country whose laws do not permit a small employer that has engaged a PEO from participating in the PEO's large group health plan. Under current law, a Maryland small employer may engage a PEO to perform human resource and payroll services and may take advantage of pension and retirement plans sponsored by the PEO. However, with respect to health insurance, Maryland law looks at the number of people at the workplace employer level in determining whether the health insurance issued to those individuals must meet small group vs large group requirements.

Previously, some stakeholders have raised concerns that allowing small employers to access PEO-sponsored large group plans could have the effect of drawing healthier-than-average employees out of the small group market - leaving employers with less healthy employees behind to face rising premiums. In light of these concerns, Maryland has taken steps in the past to protect the small group market from the potential effects of PEO participation. In 2018, the Maryland General Assembly passed legislation which clarified that small group laws applied to any health benefit plan offered by an association, PEO, or any other entity, including a plan issued under the laws of another state, if the health benefit plan covers eligible employees of one or more small employers in the State.

In light of ongoing discussion concerning the impacts of PEOs on the small group market, last year the MIA conducted a study of PEOs per the requirements of House Bill 821 (2024).¹ Research performed in the course of the study found a lack of empirical data available to draw a conclusive judgement about the potential impact of PEOs on Maryland's small group market. Similarly, data received on other states' experiences was inconclusive as well. However, given the unique nature of Maryland's long-time history of consumer protections in the small group market for small employers, it is also unclear how comparable other state experiences are to the Maryland experience.

Senate Bill 760 introduces considerable changes to Maryland's small group health insurance landscape, potentially at the expense of consumer protection. Maryland's small group market has already experienced a notable decline, with enrollment numbers decreasing year over year from approximately 270,000 in 2018 to 227,000 in 2024. This bill allows those insured under small group plans to gain access to large group benefits and rates via PEOs - thus, potentially exiting Maryland's small group market, contributing to further decline. Further, for employers who join a PEO headquartered in a different state, the bill would allow Maryland consumers to access those large group benefits and rates without any of the protections afforded by Maryland's current law, including Maryland's mandated benefits. Additionally, the MIA's ability to assist these consumers with complaints regarding their coverage would be limited due to a lack of jurisdiction. For employers seeking to join a PEO located in Maryland, this bill would allow PEOs to operate outside the regulatory framework of Maryland's small group laws. This means that the policies issued by in-state PEOs may not provide all the protections mandated under Maryland's small group law, and may also underwrite based on health status and other factors.

The MIA understands that the intent behind this bill is to allow for lower cost health coverage options for Maryland's small employers. The MIA looks forward to continuing to work with the sponsors of this legislation, the committee, and stakeholders on options to increase access and affordability of health coverage for small employers, while being mindful of the important consumer protections in the State's small group market.

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

¹ Maryland Insurance Administration (2024). Professional Employer Organizations (PEO) Study. <https://insurance.maryland.gov/Consumer/Appeals%20and%20Grievances%20Reports/Professional-Employer-Organizations-Study.pdf>