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December 19, 2008

The Honorable Thomas M. Middleton, Chairman
Senate Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen St.
Annapolis, MD 21401

The Honorable Peter A. Hammen, Chairman
Health and Government Operations Committee
House Office Building, Room 241
6 Bladen St.
Annapolis, MD 21401

Dear Chairman Middleton and Chairman Hammen:

Chapter 9 Acts 1993 as amended by Chapter 258 Acts 1994 (MSAR #992) requires the Maryland Insurance Administration (MIA) to annually determine if the so-called "trigger" has been reached, extending small group market reform rules to the entire commercial market for health benefits. For 2008, the MIA has determined that the "trigger" has not been reached. More importantly, the data shows a continuing decline in the number of Maryland residents with insured health benefits and a corresponding increase in the number of Maryland residents with other employment based health benefits. In effect, the number of Maryland residents protected by Maryland insurance laws continues to decline.

In 1993, some suggested the rules health insurers, nonprofit health service plans, and health maintenance organizations (hereinafter "carriers") must follow when offering health benefits to small employers should apply to the entire commercial market for health benefits. The General Assembly specified these rules would apply when more than 60 percent of Maryland's population under the age of 65 has: (1) an insured health benefit plan; or (2) other employment based self-insured/self-funded health benefits from an employer who has registered with the MIA to agree to provide his or her employees with insured health benefits for a three year period. When this percentage was met, the "trigger" would be reached and the rules applicable to the small group market would apply to all insured health benefits. These include guaranteed issuance, no pre-existing condition limitations, and adjusted community rating.

To assess whether the "trigger" has been reached, each year the MIA requires carriers, managed care organizations and third party administrators offering health benefit plans¹ to report the number of insured and self-insured contracts and the number of insured and self-insured Maryland lives under the

¹ For purposes of the survey, health benefit plan means: (1) a policy or certificate for hospital or medical benefits; (2) a nonprofit health service plan; or (3) a health maintenance organization subscriber or group master contract. It includes a policy or certificate issued through a multiple employer trust or association in this State or another State that covers residents of this State who are eligible employees. Health benefit plan does not include accident-only insurance, fixed indemnity insurance, credit health insurance, Medicare supplemental policies, CHAMPUS, long-term care insurance, disability income insurance, coverage issued as a supplement to liability insurance, workers' compensation insurance, disease specific insurance, automobile medical payment insurance, dental insurance or vision insurance.

age of 65 as of a specified date. The data is self-reported and unaudited. The correspondence and the survey instrument sent this year to carriers, managed care organizations and third party administrators is available on the MIA's website at www.mdinsurance.state.md.us under "Company Reporting Requirements".

The survey asks for information about the type of health benefits carriers and third party administrations provide to Maryland residents under the age of 65 in the commercial market. The commercial market has two primary components: insured health benefits and other employment-based health benefits. Group insured health benefits and individual health benefits comprise the commercial market for insured health benefits. Group self-insured health benefits and the Federal Employees Health Benefit Plan (FEHBP) comprise the commercial market for other employment based health benefits. Tables 1 and 2 summarize the survey data the MIA received for 2005 and 2008.

| Table 1: Health Benefits and Maryland Population Under Age 65, 2005 and 2008 | | | | | |
|---|-------------|---|-------------|---|-------------------------------|
| | 2008 | % of Population Under age 65, 2008 | 2005 | % of Population Under age 65, 2005 | % Change, 2005 to 2008 |
| Population under age 65 | 4,949,988 | | 4,933,916 | 100.0% | 0.3% |
| Commercial market | 3,590,609 | 72.5% | 3,558,697 | 72.1% | 0.9% |
| Group -- insured | 1,080,907 | 21.8% | 1,271,774 | 25.8% | -15.0% |
| Group -- self-insured | 1,744,373 | 35.2% | 1,584,834 | 32.1% | 10.1% |
| FEHBP | 593,469 | 12.0% | 535,714 | 10.9% | 10.8% |
| Individual | 171,860 | 3.5% | 166,375 | 3.4% | 3.3% |
| Insured (group insured and individual) | 1,252,767 | 25.3% | 1,438,149 | 29.1% | -12.9% |
| Other employment based (group self-insured and FEHBP) | 2,337,842 | 47.2% | 2,120,548 | 43.0% | 10.2% |

| Table 2: Commercial Market for Health Benefits, 2005 and 2008 | | | | |
|--|-------------|-------------------------------------|-------------|-------------------------------------|
| | 2008 | Percent of Commercial Market | 2005 | Percent of Commercial Market |
| Insured health benefits | 1,252,767 | 34.9% | 1,438,149 | 40.4% |
| Other employment based health benefits | 2,337,842 | 65.1% | 2,120,548 | 59.6% |
| Total commercial market | 3,590,609 | 100.0% | 3,558,697 | 100.0% |

As Table 1 shows, the percentage of the population under age 65 with commercial health benefits has remained relatively constant between 2005 and 2008. About 72 percent of Maryland's population under the age of 65 has commercial health benefits.

But over this three year period, the percentage of the population under age 65 with insured health benefits has declined from 29 percent in 2005 to 25 percent in 2008, a decrease of 12.9 percent. This decline is attributable to the drop in the number of Maryland residents with group insured health benefits. Conversely, the percentage of the population under the age of 65 with other employment based health benefits increased from 43 percent in 2005 to 47 percent in 2008.

Looking just at the commercial market, 40.4 percent of those with commercial health benefits in 2005 had insured health benefits. This declined to about 35 percent by 2005. Conversely, nearly 60 percent of those with commercial health benefits in 2005 had other employment based health benefits in 2005 increasing to 65 percent in 2008.

The change in the commercial market for health benefits has important policy implications. First, it is highly unlikely the "trigger" will ever be reached. In 1998, the percentage of the population under the age of 65 with insured health benefits (42.8 percent) slightly exceeded the percentage of the population under the age of 65 with other employment based health benefits (37.9 percent). At that time, it seemed possible the "trigger" might be reached. Since then, the percentage of the population under the age of 65 with insured health benefits has continued to decline. Today, only about a quarter of the population under the age of 65 has insured health benefits.

Second, the majority of Maryland residents with commercial health benefits are not protected by Maryland state insurance laws. Only 1.2 million Maryland residents are protected by Maryland insurance law; federal law protects the majority of Maryland residents with commercial health benefits, 2.3 million.

Because of the dramatic change in the commercial market for health benefits since 1993, the MIA respectfully requests that the General Assembly repeal the "trigger" but continue to require the MIA to annually provide estimates to the General Assembly about the commercial market for health benefits. The MIA believes it is important for the General Assembly to have information about the commercial market for health benefits based on information provided by carriers, managed care organizations and third party administrators as it considers various changes to Maryland insurance laws.

While policymakers are generally aware that Maryland insurance law does not extend to every Maryland resident with commercial health benefits, the information the MIA has collected from carriers, managed care organizations and third party administrators suggests the protections offered by Maryland insurance law extend to a shrinking percentage of the commercial market for health benefits. Understanding the size and characteristics of the commercial market for health benefits may have important implications for your deliberations on various policy proposals. For this reason, we urge you to hold a briefing on the size and characteristics of the commercial market for health benefits in your respective committees in the upcoming 2009 Legislative Session.

If you have any questions or concerns, please feel free to contact me at 401-468-2002 or by e-mail at bsammis@mdinsurance.state.md.us.

Sincerely,



Beth Sammis
Deputy Insurance Commissioner

BS:mmh

cc: Marie L. Grant, Committee Staff, Senate Finance Committee
Linda Stahr, Committee Staff, House Health and Government Operations Committee
Sarah T. Albert, Library Associate, Department of Legislative Services (5 copies)