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The Honorable Marie Grant
Commissioner, Maryland Insurance Administration
200 St Paul St #2700
Baltimore, MD 21202

RE: Comments on Level Funding from National Association of Benefits and Insurance Professionals (NABIP MD)

Dear Commissioner Grant,

Pursuant to your request for comments on the subject of level funding in the small employer health insurance market, our client, the National Association of Benefits and Insurance Professionals of Maryland (NABIP MD), offers the following statement on this subject.

In 1993, the Maryland General Assembly enacted House Bill 1359, which established a statutory framework for the provision of group health insurance to small employers (2-50 employees) in Maryland. Among the significant changes in that legislative enactment, perhaps the most important was a requirement that policies issued to employers under Maryland small group (MSG) would become effective on a guaranteed issue basis. NABIP MD was actively involved in that legislation and since that time has been equally active in efforts to protect the MSG market in the State. Not infrequently, our efforts paralleled those of the Maryland Insurance Administration. Enrollment in MSG peaked in the mid-1990s at approximately 500,000 lives. Today, the market is 227,000 lives.

Following the passage of the federal Patient Protection and Affordable Care Act (ACA) in 2010, implementation began in 2014. The ACA chiefly benefited applicants seeking individual health coverage, and also included the benefit of a guaranteed issue provision. Although the ACA also had provisions for the issuance of group health insurance to certain small employers, that feature has not been commercially viable in Maryland.

The ACA market in the State since implementation began in 2014 has grown to 247,000 lives. Therefore, some small businesses may have elected to forego participation in MSG in favor of ACA offerings.

The rate of inflation in health care generally has been substantial during this period of time. In fact, carriers seeking to meet the other requirements of the ACA have had to modify product offerings to include greater cost sharing by insureds. This phenomenon is currently under debate in Washington with respect to expiring subsidies for ACA products.

Most Americans receive health insurance, or more precisely, health care coverage, from their employers. This coverage is typically offered through what are known as self-funded plans. Because a fundamental rule of any insurance offering is the law of large numbers; i.e. the requirement that a successful insurance program insure many individuals who will not use its benefits, self-funding has typically been offered only to employers with large numbers of employees. The advent of greater cost sharing in the individual market has, because of inflation, necessarily been reflected in the employer market. In fact, the phenomenon of greater cost sharing is almost universal in both the ACA and MSG markets.

Self-funding has now moved from a product used only by larger employers into the small employer market. MSG and level funded products are different, as evidenced by the industry-created term of "level funding." Level funding is usefully considered as simply a step toward self-funding. It is not self-funding as utilized by larger employers. It does, however, impose new requirements on small employers who wish to avail themselves of lower costs that may be available in level funded products. Those lower costs are one factor in the employer's decision whether to maintain health insurance coverage for employees.

As noted above, NABIP MD members have always sought to protect the MSG market for the benefit of our small employer clients. We also have a longstanding principle to seek product improvement for the benefit of our clients. The position of NABIP MD on the subject of level funding is, therefore, that level funding may be a useful tool, depending on the circumstances and needs of a particular employer. It is the role of the licensed health insurance broker to be knowledgeable about both level funding and standard MSG in order to properly advise our clients.

Some examples of the need for knowledgeable insurance producers in the level funded market include carrier rating practices that may impose substantial risk on insureds, not when a new policy is written, but upon renewal. Some benefits of level funding include the ability of small groups to examine the actual claims experience of a group – a benefit not available in fully insurance MSG. There is also an ability in the level funded market to share in any surplus (the excess of premiums over claims) in a plan year. The analysis of these and other factors is not a simple process. Small employers are highly unlikely to have resources within their businesses that would permit a complete and objective evaluation of the suitability of these products. It is essential, therefore, that small employers utilizing level funding do so with the assistance of a knowledgeable professional.

Notwithstanding the need for assistance from knowledgeable and experienced producers, some issues related to level funding should be addressed by certain disclosures. For example, when an employee of a small employer is over age 65 and considering a level funded plan, carriers may assume that such employee is enrolled in Medicare Part B. Such an assumption may result in the enrollee becoming subject to greater out of pocket costs. Therefore, in addition to the recommendation of requiring specific continuing education for brokers providing level funding products, the Administration may consider certain information that should be disclosed at the point of sale.

With respect to additional continuing education requirements on level funding for licensed insurance producers in Maryland, we note the presence in the Insurance Article of other areas requiring specific forms of continuing education. One such example is a requirement for property and casualty producers to obtain continuing education on the specific subject of flood insurance. We believe that level funding may present a similar need for consideration.

Very truly yours,

A handwritten signature in dark ink, reading "Bryson Popham". The signature is fluid and cursive, with the first name "Bryson" and last name "Popham" clearly distinguishable.

Bryson F. Popham, Esq.

cc: Jamie Sexton
David Cooney