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The Honorable David Cooney
Associate Commissioner
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202

RE: Comments of the National Association of Business Insurance Professionals of Maryland (NABIP MD) for Administration study required under SB 821/HB 827 (2024)

Dear Commissioner Cooney,

This comment letter is offered on behalf of the National Association of Business Insurance Professionals (NABIP MD). We wish to thank the Administration for the opportunity to appear and testify at the hearing on July 24th, and to emphasize the importance of this study, and this issue, to the licensed health insurance producers that NABIP MD represents.

As a trade association comprised largely of licensed health insurance producers in Maryland, NABIP MD is deeply concerned about potentially significant changes to current Maryland law governing the marketing, underwriting and rating of employer-sponsored health insurance to small employer groups (2-50 employees) in the State by or through professional employer organizations (PEOs).

Our concerns are in two principal areas: 1) the marketing of these products by PEOs to Maryland small businesses, and 2) the ability of small businesses to separate the health insurance products offered from the other services offered a PEO – a process known as “unbundling.” The fundamental question that must be answered is this: how do we keep a critical mass of individuals participating in Maryland small group and prevent other entities, such as PEOs from “cherry-picking” this market by enrolling only small employers with healthy employee populations?

STATUTORY BACKGROUND

The health insurance needs of employees in small businesses have long been served by experienced health insurance producers. In 1993, legislation was enacted in Maryland applying a number of new rating and underwriting rules to this market. Perhaps the most significant change was a requirement that all such insurance must be offered on a guaranteed issue basis. Since the enactment of the federal Affordable Care Act of 2010, this requirement has also applied to similar small group laws in all states.

NABIP MD has resisted various efforts over the years to carve out blanket exemptions to the prohibitions on medical underwriting in small group that were enacted in 1993. Organizations such as local chambers of commerce, as well as PEOs, sought these exemptions. On several occasions, our opposition to such legislative initiatives was joined by the Maryland Insurance Administration. A primary reason for this opposition was the need to maintain a small employer health insurance market that would be protected from efforts to apply medical underwriting or rating provisions, either to entire groups or selected employees within a group. A key provision of small group reform – arguably the most important provision – was the guaranteed issue requirement.

RECENT MARKET DEVELOPMENTS

The basic rule of insurance – the law of large numbers – requires that any insurance risk be spread across a population of a certain size to enable individual participants to afford to pay the premiums that cover the risk. Our fear, then and now, was that creating exemptions in the small group rules for health benefit plans marketed by PEOs could result in the

erosion of the small group pool because only healthy employee populations would migrate to the large group model utilized by PEOs. This market movement would, in turn, leave remaining small groups with a relatively less healthy, and therefore higher cost, rating structure.

Protecting the integrity of the risk pool for the small group market is of paramount concern to NABIP MD members, and should be an equal concern to Maryland regulators and legislators. At the same time, some insurers are offering new products that include self-funding features that permit a willing employer to share the risk with an insurer. These new products are relatively few in number and are not expected to replace standard small group. In addition, we observe that other mechanisms exist whereby employers pool together to purchase insurance products collectively and receive benefits similar to those offered by a PEO. Two examples of these mechanisms are stop-loss insurance captives and consortiums. We believe that such mechanisms may be prohibited under current Maryland small group law, and that changing the law to accommodate health benefit plans offered by PEOs may, in turn, invite these types of alternatives into the market. The result could be even greater pressure to depopulate the small group market by removal of healthier risks.

Currently, Maryland has approximately 250,000 lives in the standard small group market, which is down from nearly twice that number 30 years ago. While NABIP MD endorses efforts to provide newer, more innovative products to small employers in Maryland, it should not be done at the expense of current participants in the Maryland small group market.

ISSUES RELATED TO PEO PARTICIPATION IN MARYLAND SMALL GROUP

Some commonsense observations to a newly authorized PEO entrance into the Maryland small group market suggest themselves.

MIA Jurisdiction

It must be remembered that the Maryland Insurance Administration has, as its top priority, the protection of insurance consumers throughout the State. In this case, that term embraces both small businesses who sponsor health benefit plans and their employees who participate in such plans. Today, for example, if a complaint is received by the MIA about the conduct of a licensed health insurance producer in selling or servicing a health benefit plan, the MIA has ample authority to ensure compliance with the law and render necessary assistance to an injured party. Because PEOs are not licensed by the MIA, any such complaints, arguably, might not be resolved as effectively.

It is unsurprising that NABIP MD would promote and support the existing compliance framework in which the MIA regulates licensed insurance producers. We note that licensed health insurance producers have a natural incentive to serve the needs of their clients – in this case, small businesses in Maryland with between 2 and 50 employees. For that reason, we assert with confidence that the first recourse for such small businesses seeking assistance is the licensed insurance producer of record. That individual may or may not be present in the framework of a PEO-sponsored health benefit plan. In other words, the local health insurance producer may have a greater incentive to properly service its clients than a much larger organization where personal contact may be limited. For this reason, we urge the MIA to carefully consider the need, in the event PEOs are permitted to enter the small group market, for having a licensed Maryland health insurance producer as producer of record and to serve as a contact for the MIA.

We also wish to advise the Administration, as we stated during the hearing, that certain provisions of Insurance Article, Title 27, the Unfair Trade Practices title, may be involved in this analysis. In addition, the Administration should examine the definitions of the terms “insurance producer,” “sell,” “solicit,” and “negotiate” in Title 10 of the insurance article. We believe each of these definitional terms may be relevant to any regulatory framework that the Administration may propose or recommend with respect to PEOs. With respect to the provisions of the Unfair Trade Practices Act, the Administration should consider whether current law provides sufficient authority to handle a complaint from a small employer or an employee that participates in a PEO plan.

PEO Market Practices Today

We understand that there are certain practices that have been undertaken by some PEOs that cause additional concern. In a comment by a NABIP MD member during the July 24th hearing, the example of a small employer being involuntarily

separated from a PEO large group was raised. Another example offered by one of our members is the practice of "lasering," in which a single employee is removed from a small employer group that is seeking coverage through a PEO plan. The reason for such actions is likely either the loss experience of a group or individual, or an individual's health condition. In either case, the removal of otherwise eligible individuals is done to avoid future losses, and would leave the affected group or employee with few coverage options. This is precisely the reason that Maryland small group was enacted in 1993 with a guaranteed issue requirement.

We hope the Administration finds these comments helpful as you address this important subject. Furthermore, we wish to emphasize that the fundamental objective of the members of NABIP MD is to promote policies that will encourage greater participation of Maryland citizens in the health insurance market. We look forward to continuing our work with the Administration and the General Assembly in pursuit of that goal.

Very truly yours,

A handwritten signature in black ink that reads "Bryson Popham". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Bryson Popham