

October 27, 2022

Governor Larry J. Hogan Jr.
Governor's Office of Maryland
100 State Circle
Annapolis, Maryland 21401-1925

Senator Delores G. Kelley, Chair
Senate Finance Committee
Miller Senate Office Building, 3 East
11 Bladen Street
Annapolis, MD 21401

Delegate Joseline A. Peña-Melnyk, Chair
Health and Government Operations Committee
Taylor House Office Building, Room 241
6 Bladen Street
Annapolis, MD 21401

Re: Senate Bill 632 of 2022 – Small Business and Nonprofit Health Insurance Subsidies Program –
Workgroup Supplemental Letter

Dear Governor Hogan, Chair Kelley, and Chair Peña-Melnyk,

As a supplement to the previous submission in response to Senate Bill 632, regarding the Small Business and Nonprofit Health Insurance Subsidies Program, the Workgroup voted unanimously to recommend that Maryland Health Benefit Exchange (MHBE) submit a letter to the legislature to complement the final report and recommendations, in order to provide more information on legal and administrative considerations related to a proposal to provide financial incentives to small business owners for hosting educational and enrollment events. Because this proposal surfaced late in the Workgroup's discussions, additional time was needed to assemble this information.

Under this proposal, the state would set aside funds to provide financial incentives for small business and non-profit employers with 2-50 employees to help their employees sign up for health insurance coverage. Employers can choose to work with authorized producers who specialize in assisting employers and employees select plans that meet their needs. A portion of the \$2-\$4 million recommended by the Workgroup for marketing and outreach to small employers could be used either to reward employers for each employee who signs up for insurance (either through a small group plan or in the individual market, depending on employer decisions regarding coverage options) and/or to cover expenses related to holding information sessions and signup events at the workplace. MHBE could provide special branding to small employers who host the events so that businesses could publicly advertise that they support health care for their employees. Expenses could include food for attendees or compensation to the employer for lost productivity during the event. In the workgroup report, it is

contemplated that these information sessions be held by MHBE Authorized Producers, with a curriculum established by MHBE.

In MHBE's opinion, relevant laws, regulations, and MHBE policies do not prohibit the use of funds in the manners proposed.

In MHBE's opinion, using funding provided pursuant to Senate Bill 632 of 2022 to support small businesses, nonprofit employers, and their employees in enrolling in either small group or individual market coverage would be within the scope of the legislative intent of the bill. SB 632 establishes that the goal of the Workgroup was to develop recommendations relating to the establishment of a program to assist small businesses, nonprofit employers, and their employees with "the purchase of health benefit plans." The bill does not limit support to the SHOP program, or to employers alone.

Avoiding Producer Kickbacks

The current proposal outlined and explained in the workgroup report limits subsidy recipients to employers and employees, which would not run afoul of producer kickback regulations.

MD Insurance Code §31-112(g)(3) and §31-113(n)(3) prohibit the Exchange from compensating producers on the SHOP and Individual exchange. Therefore, as long as the subsidy contribution to employers/employees or to cover food costs is not paid to the producer, there is no regulation prohibiting the use of funds in this manner.

Producer Marketing Guidelines

MHBE's Authorized Producer Manual (2018) Section 3.12, includes marketing guidelines producers must follow and which would be relevant to producers as hosts of the proposed information sessions. Guidelines include but are not limited to:

- Any presentations and materials produced by the MHBE, and Maryland Health Connection must not be altered or reproduced without the consent of the Maryland Health Benefit Exchange.
- Authorized Producers may attend community outreach events organized by Maryland Health Connection with prior approval from the marketing department. Authorized Producers may distribute business cards at these events. Pamphlets or other marketing materials may not be distributed unless authorization has been obtained through the Marketing Department at the Maryland Health Benefit Exchange at least two weeks prior to the event.
- Authorized Producers may host community outreach events. All events must include information about all insurance carriers and plans available through Maryland Health Connection in an unbiased manner.

Administrative Challenges

Providing payment to employers hosting enrollment events for their employees presents administrative challenges including determining criteria for incentive qualification, managing, tracking, verifying, and issuing payment to small businesses who take advantage of the incentive. Workgroup members were split about the advantages and disadvantages of this proposed incentive idea.

Recommendation

The workgroup supported the idea of small employers and nonprofits hosting events to help their employees obtain coverage and MHBE providing special branding to employers who take advantage of the opportunity, noting that this could boost employee recruitment and retention while also reducing the number of uninsured Marylanders.

Thank you for your continued interest in ensuring small business and nonprofit employers and employees have access to affordable, high quality health insurance.

If you have any questions regarding this letter, please contact Johanna Fabian-Marks, Director of Policy and Plan Management at (443) 890-3518 or at johanna.fabian-marks@maryland.gov.

Sincerely,



Michele Eberle
Executive Director