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OFFICE OF THE
SECRETARY

VINCENT C. GRAY
MAYOR

AY -7 2014

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

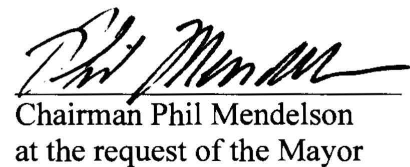
Today, I am transmitting the proposed bill "Federal Health Reform Implementation and Omnibus Amendment Act of 2014" ("Bill"). The purpose of the Bill is to grant the Commissioner of the Department of Insurance, Securities and Banking the authority enforce the health insurance market provisions of the Affordable Care Act ("ACA") and implement other provisions, such as establishing rating standards be used by health insurance issuers when setting rates, providing uniform definitions for small and large employers, defining excepted benefits, and regulating stop-loss insurance.

To date, the District government has capably implemented the ACA in the District and established a state-based health insurance exchange. However, in order to enforce the health insurance market reform provisions of the ACA and further ensure that the District's insurance market realizes the full benefits of the ACA, the legal authorities provided in this Bill must be enacted.

Accordingly, I urge the Council to act favorably and expeditiously on the proposed Bill.

Sincerely,

Vincent C. Gray



Chairman Phil Mendelson
at the request of the Mayor

A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

____

Chairman Phil Mendelson, at the request of the Mayor, introduced the following bill, which was referred to the Committee ______________________.

To authorize the Commissioner of the Department of Insurance, Securities and Banking to implement and enforce the health insurance market provisions of the Affordable Care Act, including establishing a benchmark plan that includes the essential health benefits and requiring that certain rating standards be used by health insurance issuers when setting rates, to provide uniform definitions for the terms "large employer" and "small employer," to define "excepted benefits," and to regulate stop-loss insurance.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Federal Health Reform Implementation and Omnibus Amendment Act of 2014".

Sec. 2. Compliance with Federal Health Reform.

(a) Sections 1251, 1252 and 1304 of the Patient Protection and Affordable Care Act, approved March 23, 2010 (124 Stat. 119; 42 U.S.C. §§ 18011, 18021 and 18024), as they may be amended from time to time ("Affordable Care Act"), and sections 2701 through 2709, 2711 through 2719A, and 2794 of the Public Health Service Act, approved July 1, 1944 (58 Stat. 682; 42 U.S.C. §§ 300gg, 300gg-1, 300gg-2, 300gg-3, 300gg-4, 300gg-5, 300gg-6, 300gg-7, 300gg-8, 300gg-9, 300gg-11, 300gg-12, 300gg-13, 300gg-14, 300gg-15, 300gg-15A, 300gg-16, 300gg-17, 300gg-18, 300gg-19, 300gg-19A, and

1 300gg-94) as they may be amended from time to time ("Public Health Service Act"), and
2 any rules promulgated thereunder, respectively, are incorporated by reference herein and
3 shall apply to all insurers, hospital and medical services corporations, and health
4 maintenance organizations that deliver or issue for delivery individual or group health
5 insurance policies or contracts in the District.

6 (b) The Commissioner has the authority to take applicable enforcement action to
7 enforce violations of subsection (a) pursuant to any enforcement authority codified in
8 Title 31.

9 (c) The Commissioner is authorized to promulgate rules to implement the
10 provisions referenced in subsections (a) and (b) of this section.

11 Sec. 3. The Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage
12 Act of 1986, effective February 28, 1987 (D.C. Law 6-195; D.C. Official Code § 31-3101
13 *et seq.*) is amended as follows:

14 (a) Paragraph 2(10A) (§ 31-3101(10A)) is amended to read as follows:

15 "(10A) 'Large Employer' means, in connection with a group health plan
16 with respect to a calendar year and a plan year, a single employer who employed an
17 average of at least 51 employees on business days during the preceding calendar year and
18 which employs at least 2 employees on the first day of the plan year.

19 "(A) For the purposes of this paragraph:

20 "(i) All persons treated as a single employer under section
21 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 (26 U.S.C. § 414(b), (c),
22 (m), or (o)) shall be treated as a single employer.

1 "(ii) An employer and any predecessor employer shall be
2 treated as a single employer.
3 "(iii) All employees shall be counted, including part-time
4 employees and employees who are not eligible for health benefit coverage through the
5 employer.
6 "(iv) If an employer was not in existence throughout the
7 preceding calendar year, the determination of whether that employer is a large employer
8 shall be based on the average number of employees that employer is reasonably expected
9 to employ in the current calendar year."
10 (b) Paragraph 2(19A) (§ 31-3101(19A)) is amended to read as follows:
11 "(19A) 'Small employer' means a single employer that employed an
12 average of not more than 50 employees during the preceding calendar year.
13 "(A) For the purposes of this paragraph:
14 "(i) All persons treated as a single employer under section
15 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 (26 U.S.C. § 414(b), (c),
16 (m), or (o)) shall be treated as a single employer.
17 "(ii) An employer and any predecessor employer shall be
18 treated as a single employer.
19 "(iii) All employees shall be counted, including part-time
20 employees and employees who are not eligible for health benefit coverage through the
21 employer.
22 "(iv) If an employer was not in existence throughout the
23 preceding calendar year, the determination of whether that employer is a small employer

1 shall be based on the average number of employees that employer is reasonably expected
2 to employ in the current calendar year."
3
4 Sec. 4. The Health Insurance Portability and Accountability Federal Law
5 Conformity and No-Fault Motor Vehicle Insurance Act of 1998, effective April 13, 1999
6 (D.C. Law 12-209; D.C. Official Code § 31-3301.01 *et seq.*) is amended as follows:
7 (a) Section 101 (D.C. Official Code § 31-3301.01) is amended as follows:
8 (1) A new paragraph (19a) is added to read as follows:
9 "(19a) 'Health Benefit Exchange Authority Establishment Act' means the
10 Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2011
11 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 *et seq.*).
12 (2) Paragraph (15) is amended to read as follows:
13 "(15) 'Excepted benefits' means benefits under one or more (or any
14 combination thereof) of the following:
15 "(A) Benefits not subject to the requirements of this chapter
16 including:
17 "(i) Coverage only for accident, or disability income
18 insurance, or any combination thereof;
19 "(ii) Coverage issued as a supplement to liability
20 insurance;
21 "(iii) Liability insurance, including general liability
22 insurance and automobile liability insurance;
23 "(iv) Workers' compensation or similar insurance;

1 "(v) Medical expense and loss of income
2 benefits;
3 "(vi) Credit-only insurance;
4 "(vii) Coverage for on-site medical clinics; and
5 "(viii) Other similar insurance coverage, specified in
6 regulations, under which benefits for medical care are secondary or incidental to other
7 insurance benefits;
8 "(B) Benefits not subject to the requirements of this chapter if
9 offered separately including:
10 "(i) Limited scope dental or vision benefits
11 supplemental to a qualified benefit plan certified under section 10 of the Health Benefit
12 Exchange Authority Establishment Act;
13 "(ii) Benefits for long-term care, nursing home care,
14 home health care, community-based care, or any combination thereof; and
15 "(iii) Such other similar, limited benefits as are specified
16 in regulations;
17 "(C) Benefits not subject to the requirements of this chapter if
18 offered as independent, noncoordinated benefits, supplemental to a qualified benefit plan
19 certified under section 10 of the Health Benefit Exchange Authority Establishment Act
20 including:
21 "(i) Coverage only for a specified disease or illness; and
22 "(ii) Hospital indemnity or other fixed indemnity
23 insurance; and

1 “(D) Benefits not subject to the requirements of this chapter if
2 offered as a separate insurance policy including:
3 “(i) Medicare supplemental health insurance (as defined
4 under section 1882(g)(1) of the Social Security Act, approved June 9, 1980 (72 Stat.
5 1445; 42 U.S.C. § 1395ss(g)(1));
6 “(ii) Coverage supplemental to the coverage provided
7 under Chapter 55 of Title 10, United States Code (10 U.S.C. § 1071 *et seq.*); and
8 “(iii) Similar supplemental coverage provided to
9 coverage under a group health plan.
10 “(E) ‘Excepted benefits’ does not mean any combination of
11 benefits described in subsections 15(A)(i), B(i), (C)(i) or (C)(ii) of this section.”.
12 (3) Paragraph (26) is amended to read as follows:
13 “(26) ‘Individual health insurance coverage’ means health insurance
14 coverage offered to individuals in the individual market, which includes a health benefit
15 plan provided to individuals through a trust arrangement, association, or other
16 discretionary group that is not an employer plan, but does not include coverage defined as
17 excepted benefits. The term ‘individual health insurance coverage’ does not include
18 short-term limited duration coverage.”.
19 (4) Paragraph (29) is amended to read as follows:
20 “(29) ‘Large Employer’ means, in connection with a group health plan
21 with respect to a calendar year and a plan year, a single employer who employed an
22 average of at least 51 employees on business days during the preceding calendar year and
23 which employs at least 2 employees on the first day of the plan year.

1 "(A) For the purposes of this paragraph:

2 "(i) All persons treated as a single employer under section

3 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 (26 U.S.C. § 414(b), (c),

4 (m), or (o)) shall be treated as a single employer.

5 "(ii) An employer and any predecessor employer shall be

6 treated as a single employer.

7 "(iii) All employees shall be counted, including part-time

8 employees and employees who are not eligible for health benefit coverage through the

9 employer.

10 "(iv) If an employer was not in existence throughout the

11 preceding calendar year, the determination of whether that employer is a large employer

12 shall be based on the average number of employees that employer is reasonably expected

13 to employ in the current calendar year.".

14 (5) Paragraph (42) is amended to read as follows:

15 "(42) 'Small employer' means a single employer that employed an

16 average of not more than 50 employees during the preceding calendar year.

17 "(A) For the purposes of this paragraph:

18 "(i) All persons treated as a single employer under section

19 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 (26 U.S.C. § 414(b), (c),

20 (m), or (o)) shall be treated as a single employer.

21 "(ii) An employer and any predecessor employer shall be

22 treated as a single employer.

1 "(iii) All employees shall be counted, including part-time
2 employees and employees who are not eligible for health benefit coverage through the
3 employer.

4 "(iv) If an employer was not in existence throughout the
5 preceding calendar year, the determination of whether that employer is a small employer
6 shall be based on the average number of employees that employer is reasonably expected
7 to employ in the current calendar year.".

8 Sec. 5. The Reasonable Health Insurance Ratemaking and Health Care Reform
9 Act of 2010, effective April 8, 2011 (D.C. Law 18-360; D.C. Official Code § 31-3311.01
10 *et seq.*) is amended as follows:

11 (a) A new section 104a (§ 31-3311.03a) is added to read as follows:

12 "Essential health benefits.

13 "(a) Consistent with federal law, the Commissioner, with the approval of the
14 Executive Board of the Health Benefit Exchange Authority, shall, by rule, select the
15 benchmark plan for the individual and small group market for purposes of establishing
16 the essential health benefits in the District pursuant to section 1302 of the Patient
17 Protection and Affordable Care Act, approved March 23, 2010 (124 Stat. 119; 42 U.S.C.
18 § 18022) ("Affordable Care Act"), as it may be amended from time to time.

19 "(b) If the essential health benefits benchmark plan for the individual and small
20 group market does not include all of the benefit categories specified by section 1302 of
21 the Affordable Care Act, or a need exists to add additional benefits, the Commissioner,
22 with the approval of the Executive Board of the Health Benefit Exchange Authority, may,

1 by rule, supplement the benchmark plan benefits as needed so long as the benchmark
2 plan meets the minimum requirements of section 1302 of the Affordable Care Act.
3 "(c) A health plan offering the required essential health benefits, other than a
4 health plan offered through the federal basic health program or Medicaid, may not be
5 offered in the District unless the Commissioner finds that it is substantially equal to the
6 benchmark plan. When making this determination, the Commissioner must:
7 "(1) Ensure that the plan covers the essential health benefits categories
8 specified in section 1302 of the Affordable Care Act; and
9 "(2) May consider whether the health plan has a benefit design that
10 would create a risk of biased selection based on health status and whether the health plan
11 contains meaningful scope and level of benefits in each of the ten essential health benefit
12 categories specified by section 1302 of Affordable Care Act.
13 "(d) Notwithstanding any other provision of benefits mandated by District law,
14 the benchmark plan adopted by the Commissioner shall be the benefits required in all
15 health benefit plans offered in the individual and small group markets. Grandfathered
16 health plans as defined in section 1251 of the Affordable Care Act shall be exempt from
17 complying with the requirements of the benchmark plan.".
18 (b) A new section 104b (§ 31-3311.03b) is added to read as follows:
19 "Underwriting (Ratemaking criteria).
20 "(a) To implement section 1201 of the Patient Protection and Affordable Care
21 Act, approved March 23, 2010 (124 Stat. 119; 42 U.S.C. § 18022) ("Affordable Care
22 Act"), as it may be amended from time to time, the Commissioner, with the approval of

1 the Executive Board of the Health Benefit Exchange Authority, shall have the authority
2 to establish or define, by rule:
3 "(1) The geographic rating area for the District;
4 "(2) The age rating or curve; and
5 "(3) The rating for tobacco use.
6 "(b) The Commissioner's authority to implement subsection (a) of this section
7 shall be accomplished in a manner that is not inconsistent with, or would prevent the
8 application of, the Affordable Care Act and its implementing regulations. In exercising
9 the authority under subsection (a) of this section, the Commissioner may provide
10 consumer protections and benefits that exceed those provided in the Affordable Care Act.
11 "(c) Health insurers are required to merge their experience in the individual
12 and group markets for purposes of setting health insurance rates.".
13 Section 6. The Hospital and Medical Services Corporation Regulatory Act of
14 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3501 *et seq.*) is
15 amended as follows:
16 (a) A new paragraph 2(7C) (D.C. Official Code § 31-3501(7C)) is added to
17 read as follows:
18 "(7C) 'Small employer' means a single employer that employed an
19 average of not more than 50 employees during the preceding calendar year.
20 "(A) For the purposes of this paragraph:
21 "(i) All persons treated as a single employer under section
22 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 (26 U.S.C. § 414(b), (c),
23 (m), or (o)) shall be treated as a single employer.

1 "(ii) An employer and any predecessor employer shall be
2 treated as a single employer.
3 "(iii) All employees shall be counted, including part-time
4 employees and employees who are not eligible for health benefit coverage through the
5 employer.
6 "(iv) If an employer was not in existence throughout the
7 preceding calendar year, the determination of whether that employer is a small employer
8 shall be based on the average number of employees that employer is reasonably expected
9 to employ in the current calendar year.".
10 (b) Section 4 (D.C. Official Code § 31-3503) is amended as follows:
11 (1) Paragraph (26) is amended by striking "and" at the end of the
12 paragraph.
13 (2) Paragraph (27) is amended by striking the period at the sentence
14 and replacing it with "; and".
15 (3) A new paragraph (28) is added to read as follows:
16 "(28) Section 2(a) of the Federal Health Reform Implementation and
17 Omnibus Amendment Act of 2013 making applicable sections 1251, 1252, and 1304 of
18 the Patient Protection and Affordable Care Act, approved March 23, 2010 (124 Stat. 119;
19 42 U.S. C. §§ 18011, 18021 and 18024), as they may be amended from time to time) and
20 sections 2701 through 2709, 2711 through 2719A, and 2794 of the Public Health Service
21 Act, approved July 1, 1944 (58 Stat. 682; approved July 1, 1944 (58 Stat. 682; 42 U.S.C.
22 §§ 300gg, 300gg-1, 300gg-2, 300gg-3, 300gg-4, 300gg-5, 300gg-6, 300gg-7, 300gg-8,
23 300gg-9, 300gg-11, 300gg-12, 300gg-13, 300gg-14, 300gg-15, 300gg-15A, 300gg-16,

1 300gg-17, 300gg-18, 300gg-19, 300gg-19A, and 300gg-94) as they may be amended
2 from time to time), and the respective implementing rules promulgated thereunder.".
3 (c) Section 15 (D.C. Official Code § 31-3514) is repealed.
4 Sec. 7. Stop-Loss Insurance
5 (a) For purposes of this section, the term:
6 (1) "Attachment point" means the claims amount incurred by an insured
7 group beyond which the insurer incurs a liability for payment.
8 (i) "Individual attachment point" means the amount of health
9 claims incurred by a small employer in a policy year for an individual employee or
10 dependent of an employee, and covered by a stop-loss insurance policy, above which the
11 stop-loss insurer incurs a liability for payment, under individual stop-loss coverage. For
12 purposes of this article, "specific attachment point" has the same meaning as "individual
13 attachment point."
14 (ii) "Aggregate attachment point" means the total amount of health
15 claims incurred by a small employer in a policy year for all covered employees and their
16 dependents, and covered by a stop-loss insurance policy, above which the stop-loss
17 insurer incurs a liability for payment under aggregate stop-loss coverage.
18 (2) "Commissioner" means the Commissioner of the Department of
19 Insurance, Securities and Banking.
20 (3) "Stop-loss insurance" means coverage that insures an employer or an
21 employer-sponsored health plan against the risk that:
22 (i) One (1) claim will exceed a specific dollar amount; or
23 (ii) The entire loss of a self-insurance plan will exceed a specific

dollar amount.

(4) "Expected claims" means the total amount of claims that, in the absence of medical stop-loss insurance, are projected to be incurred by the insured using reasonable and accepted actuarial principles in a policy year.

(b) An insurer shall not issue or deliver to a small employer, as defined in section 101(42) of the Health Insurance Portability and Accountability Federal Law Conformity Act of 1998, effective April 13, 1999 (D.C. Law 12-209; D.C. Official Code § 31-3301.01(42), a stop-loss insurance policy unless the employer has a fully-insured employee health benefit plan.

(c) Stop-loss insurance is subject to the following:

(1) The policy must be issued to and insure the employer, the trustee or other sponsor of the plan, or the plan itself, but not the employees, members or participants;

(2) Payment by the insurer must be made to the employer, to the trustee or other sponsor of the plan, or to the plan itself, but not to the employees, members, participants or health care providers; and

(3) Stop-loss insurance policies issued or renewed after the effective date of this act shall not contain any of the following provisions:

(A) An individual attachment point for a policy year that is less than forty thousand dollars ($40,000).

(B) An aggregate attachment point for a policy year that is less than the greater of one of the following:

(i) Five thousand dollars ($5,000) times the total number of group members.

(ii) One hundred twenty percent (120%) of expected claims.

(iii) Forty thousand dollars ($40,000).

(d) A stop-loss insurer shall not exclude any employee or dependent on the basis of an actual or expected health status-related factor. Health status-related factors include, but are not limited to, any of the following: health status; medical condition, including both physical and mental illnesses; claims experience; medical history; receipt of health care; genetic information; disability; evidence of insurability, including conditions arising out of acts of domestic violence of the employee or dependent; or any other health status-related factor as determined by the Commissioner.

(e) A stop-loss insurer shall not cancel or non-renew a stop-loss insurance policy except as follows:

(1) The employer has failed to make the required premium payments;

(2) The employer demonstrates fraud or an intentional misrepresentation of material fact under the terms of the stop-loss insurance policy;

(3) The stop-loss insurer has been determined by the Commissioner to be financially impaired;

(4) The stop-loss insurer ceases to write, issue, or administer new stop-loss insurance policies in the District; provided the following conditions are satisfied:

(A) The insurer provides notice to the Commissioner and employer of its intent to cease writing, issuing, or administering new or existing stop-loss insurance

1 policies in the District at least one hundred eighty (180) days prior to the date the insurer
2 seeks to discontinue the coverage; and
3 (B) The insurer provides the employer at least one hundred eighty
4 (180) days advance written notice of its intent to cancel stop-loss insurance coverage
5 beginning from the date of discontinuation provided to the Commissioner pursuant to
6 subparagraph (A) of this paragraph.
7 (f) If an insurer elects to cancel or non-renew an employer's stop-loss insurance
8 pursuant to paragraph (1) of subsection (e), the insurer must:
9 (1) Provide the employer notice no less than thirty (30) days prior to
10 the date of cancellation or expiration of the policy period;
11 (2) Accept any premium payment by the employer that would satisfy
12 any outstanding amounts owed to the insurer and cure the deficiency giving rise to the
13 cancellation or non-renewal; and
14 (3) Continue the policy in full force until the date of cancellation or
15 expiration provided in the notice.
16 (g) Nothing in this section shall be construed to extinguish, limit, or otherwise
17 impair any existing right in law or equity arising under a stop-loss insurance policy.
18 (h) On April 1, 2015, and on April 1 annually thereafter, a stop-loss insurer shall
19 report to the Commissioner the number of small employer stop-loss policies it had issued
20 and in effect as of December 31 of the previous year. The information shall include new
21 policies issued and policies reissued or renewed in the previous year for groups that have
22 1 to 50 employees and 51 to 100 employees.
23 (i) The provisions of this section shall apply to stop-loss insurance policies issued

or renewed after the effective date of this act..

(i) The Commissioner is authorized to adopt rules to implement the requirements of this section, including rules providing for:

(1) Additional standards for employee benefit stop-loss insurance policies; and

(2) Required disclosures to policyholders by an insurance carrier providing employee benefit stop-loss insurance.

Sec. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-206(c)(1)), and publication in the District of Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Legal Counsel Division

MEMORANDUM

TO: Lolita S. Alston
Director
Office of Legislative Support

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: February 11, 2014

SUBJECT: Legal Sufficiency Review of Draft Bill , the "Federal Health Reform Implementation and Omnibus Amendment Act of 2014" (AE-13-965)

This is to Certify that this Office has reviewed the above-referenced draft proposed legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

Janet M. Robins