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COMMISSIONER
OF THE
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INSURANCE

MURIEL BOWSER
MAYOR

OCT 15 2018

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

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is a bill entitled the "Health Insurance Marketplace Improvement Amendment Act of 2018" ("Bill"), and the accompanying emergency declaration, temporary and permanent versions. The legislation protects District residents from two federal rules that expand association health plans ("AHP") and short-term, limited-duration ("STLD") health plans in ways that would endanger the individual and small group insurance markets in the District.

This legislation amends the Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998 to revise definitions and applies the requirements of the law to multiple employee welfare arrangements ("MEWAs"). The Bill also expands the rulemaking authority of the Commissioner of the Department of Insurance, Securities and Banking, and imposes other requirements on MEWAs and short-term, limited-duration health insurance plans. Further, the Bill amends the Reasonable Health Insurance Ratemaking and Health Care Reform Act of 2010 to apply its requirements for small employers to certain MEWAs. Finally, the legislation amends the Federal Health Reform Implementation and Omnibus Amendment Act of 2014 to further specify the provisions of the federal health acts incorporated by reference and apply the small group requirements of these acts to MEWAs.

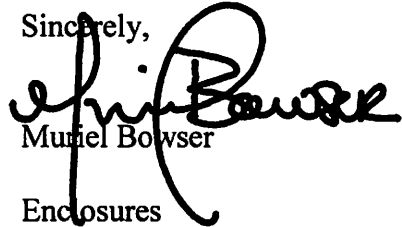
In June 2018, the U.S. Department of Labor issued a final rule that significantly changed the manner in which AHPs, which are a specific type of MEWA, are regulated. The rule makes it much easier for an association to be considered a single multi-employer plan under ERISA. Under this construction, AHPs do not have to comply with many of the Affordable Care Act's ("ACA") most important consumer protections, including the provisions requiring essential health benefits and the rating rules codified in the law. In August 2018, the U.S. Departments of Health and Human Services, Labor, and Treasury issued a final rule to dramatically expand the time individuals may use STLD health plans. This rule enlarges the maximum duration of these plans from 3 months to 36 months. Short-term plans do not have to comply with the market reforms of the ACA, and insurers are, among other things, allowed to charge higher premiums

based on health status, exclude coverage for pre-existing conditions, require higher out-of-pocket cost sharing, and opt not to cover entire categories of benefits.

The federal rules on AHPs and STLD health plans are effective on September 1, 2018 and October 2, 2018, respectively, and could adversely impact the District's 2019 individual and small group market premiums. The potentially detrimental and destabilizing effects on the District's insurance market create a compelling need for corrective legislative action.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser". The signature is written in a cursive style with a large, prominent initial "M".

Muriel Bowser

Enclosures



Chairman Phil Mendelson
at the request of the Mayor

A BILL

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 on _____.

To amend the Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998 to revise definitions, to apply the requirements of title II to multiple employee welfare arrangements (“MEWAs”), to expand the rulemaking authority of the Commissioner of the Department of Insurance, Securities and Banking, and to impose requirements on MEWAs and short-term, limited-duration health insurance plans; to amend the Reasonable Health Insurance Ratemaking and Health Care Reform Act of 2010 to apply its requirements for small employers to certain MEWAs; and to amend the Federal Health Reform Implementation and Omnibus Amendment Act of 2014 to further specify the provisions of the federal health acts incorporated by reference and apply the small group requirements of these acts to MEWAs.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
that this Act may be cited as the “Health Insurance Marketplace Improvement
Amendment Act of 2018”.

Sec. 2. The Health Insurance Portability and Accountability Federal Law
Conformity and No-Fault Motor Vehicle Insurance Act of 1998, effective April 13, 1999
(D.C. Law 12-209; D.C. Official Code § 31-3303.01 *et. seq.*) is amended as follows:

- (a) Section 101(3) (D.C. Official Code § 31-3301.01(3)) is amended as follows:
- (1) Subparagraph (E) is amended by striking the word “and” at the end.
 - (2) New subparagraphs (E-1) and (E-2) are added to read as follows:

39 “(E-1) Is domiciled and has its principal offices within the District of
40 Columbia;”

41 “(E-2) Does not expand its membership based on geography; and”

42 (3) Subparagraph (F) is amended by striking the phrase “under the laws of
43 the District of Columbia” and inserting the phrase “by the Commissioner by rule” in its
44 place.

45 (b) Section 101(12) (D.C. Official Code § 31-3301.01(12)) is amended to read as
46 follows:

47 “(12) “Employer” has the meaning given such term under section 3(5) of
48 the Employee Retirement Income Security Act of 1974, approved September 12, 1974
49 (88 Stat. 834; 29 U.S.C. § 1002(5)), as the section and implementing regulations were in
50 effect on December 15, 2017, except that such term shall include only employers of 2 or
51 more employees.

52 (c) Section 101(12) (D.C. Official Code § 31-3301.01(19)) is amended to read as
53 follows:

54 “(19) “Group health plan” means an employee welfare benefit plan (as defined in
55 section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. §
56 1002(1)), as the section and implementing regulations were in effect on December 15,
57 2017, to the extent that the plan provides medical care and includes items and services
58 paid for as medical care to employees or their dependents (as defined under the terms of
59 the plan) directly or through insurance, reimbursement, or otherwise.”.

60 (d) A new section 206a is added to read as follows:

61 “Sec. 206a. Application to multiple employer welfare arrangements.

62 “The individual market requirements of this title apply to a health benefit plan
63 offered by a multiple employer welfare arrangement, including an association,
64 professional employer or employee organization, or any other entity, if the plan covers an
65 individual in the District who is not an employee or dependent of a participating
66 employer.”.

67 (e) A new subsection 207(b-1) is added to read as follows:

68 “(b-1) The Commissioner may adopt regulations to establish and administer such
69 standards relating to the provisions of this chapter as may be necessary to improve access
70 and affordability of health insurance in the District and to maintain the requirements of
71 the Affordable Care Act.”.

72 (f) Section 301 (D.C. Official Code §31-3303.01) is amended as follows:

73 (1) Designate the existing text as subsection (a).

74 (2) Add a new subsection (b) to read as follows:

75 “(b) Small group market requirements under this title apply to a health benefit
76 plan offered by a multiple employer welfare arrangement including an association, a
77 professional employer or employee organization, or any other entity, if the plan covers an
78 employee of a small employer in the District as defined in section 101(42).”.

79 (g) New sections 313a, 313b, 313c, 313d are added to read as follows:

80 “Sec. 313a. Treatment of certain multiple employer welfare arrangements.

81 “The Commissioner may issue rules to create a grandfathered status with respect
82 to any of the requirements of this act for multiple employer welfare arrangements that
83 were in existence and operating in the District of Columbia as of December 15, 2017 and
84 that are in compliance with federal law and regulations applicable to multiple employer

85 welfare arrangements that were in place as of December 15, 2017. The Commissioner,
86 may also establish by rulemaking additional requirements for multiple employer welfare
87 arrangements granted grandfathered status.

88 “Sec. 313b. License requirement for non-District multiple employer welfare
89 arrangements.

90 “No multiple employer welfare arrangement located outside of the District of
91 Columbia may conduct any business in the District, including the marketing, offering or
92 issuing of a health benefit plan to any individual or employer, unless licensed as an
93 insurer, a hospital and medical services corporation, a fraternal benefit society, or a health
94 maintenance organization.

95 “Sec. 313c. Licensing requirement for certain multiple employer welfare
96 arrangements.

97 “(a) A multiple employer welfare arrangement that is not fully insured, as defined
98 in subsection (b) of this section, shall not operate in the District or market, offer, or issue
99 a health benefit plan to any individual or employer in the District without first meeting
100 the requirements for and becoming licensed as an insurer, a hospital and medical services
101 corporation, a fraternal benefit society, or a health maintenance organization.

102 “(b) For the purposes of this section, a multiple employer welfare arrangement is
103 not fully insured unless the covered benefits it provides are:

104 “(1) Insured on a direct basis by an insurance company licensed to transact
105 the business of insurance in District; or

106 “(2) Arranged for or provided on a direct basis by

107 “(A) A hospital and medical services corporation;

108 “(B) A fraternal benefit society;

109 “(C) A health maintenance organization licensed in the District;

110 or

111 “(D) Any combination of these entities.

112 “(c) The existence of contracts of reinsurance shall not be considered in
113 determining whether a multiple employer welfare arrangement is fully insured.

114 “Sec. 313d. Short-term, limited-duration health insurance.

115 “(a) An insurer shall not provide short-term, limited-duration health insurance
116 policies, certificates of coverage, or contracts unless the insurer has a certificate of
117 authority from the Commissioner to offer health insurance.

118 “(b) An insurer offering for sale a short-term, limited-duration health insurance
119 policy, certificate of coverage, or contract shall apply the same underwriting standards to
120 all applicants for such coverage regardless of whether the applicant has previously been
121 covered by a short-term, limited-duration health insurance policy, certificate of coverage,
122 or contract.

123 “(c) A short-term, limited-duration health insurance policy, certificate of
124 coverage, or contract shall not exclude from coverage as a pre-existing condition any
125 medical or behavioral health condition for which an applicant sought treatment in the
126 prior 12 months or for which an applicant is currently in an active course of treatment.
127 An insurer shall not use underwriting related to such a condition to deny enrollment in
128 short-term, limited-duration coverage to an applicant.

129 “(d) A short-term, limited-duration insurance policy, certificate of coverage, or
130 contract shall terminate not more than 3 months after its effective date.

131 “(e) A short-term, limited-duration health insurance policy, certificate of
132 coverage, or contract shall not be extended or renewed. The insurer shall not issue,
133 directly or indirectly through an affiliate, a new short-term, limited-duration health
134 insurance policy, certificate of coverage, or contract to an individual who had such a
135 policy, certificate of coverage, or contract from the insurer within the preceding 9
136 months.

137 “(f) An insurer shall ensure that each policy, certificate of coverage, or contract
138 for short-term, limited-duration health insurance and all application materials for
139 enrollment in that coverage displays prominently, in at least 14-point type, a statement
140 that the coverage does not constitute minimum essential coverage for purposes of
141 satisfying the individual responsibility requirement in the District of Columbia. These
142 documents shall also include any other disclosures the Commissioner may require
143 through rulemaking, including the types of benefits and consumer protections that are and
144 are not included in the coverage.

145 “(g) A company offering for sale a short-term, limited-duration health insurance
146 policy, certificate of coverage, or contract shall provide to the Commissioner any
147 information the Commissioner requires by rulemaking.”.

148 Sec. 3. The Reasonable Health Insurance Ratemaking and Health Care Reform
149 Act of 2010, effective April 8, 2011 (D.C. Law 18-360; D.C. Official Code §31-3311.01
150 *et seq.*) is amended as follows:

151 (a) Section 111 (D.C. Official Code §31-3311.10) is amended by striking the
152 phrase “date of this title.” and inserting the phrase “date of this title. Small group
153 requirements under this title apply to a health benefit plan offered by a multiple employer

154 welfare arrangement, including an association, a professional employer or employee
155 organization, or any other entity, if the plan covers an employee of a small employer in
156 the District, as defined in section 101(42) of the Health Insurance Portability and
157 Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of
158 1998, effective April 13, 1999 (D.C. Law 12-209; D.C. Official Code § 31-3301.01(42)).
159 Individual market requirements of this title apply to a health benefit plan offered by a
160 multiple employer welfare arrangement, including an association, professional employer
161 or employee organization, or any other entity, if the plan covers an individual in the
162 District who is not an employee or dependent of a participating employer.” in its place.

163 (b) Section 112 (D.C. Official Code § 31-3311.11) is amended by striking the
164 phrase “§ 18001, note).” and inserting the phrase “§ 18001, note), as the law and its
165 implementing regulations were in effect on December 15, 2017.” in its place.

166 Sec. 4. The Federal Health Reform Implementation and Omnibus Amendment
167 Act of 2014, effective May 2, 2015 (D.C. Law 20-265; 62 DCR 1529) is amended as
168 follows:

169 (a) Section 101(a) (D.C. Official Code § 31-3461(a)) is amended to read as
170 follows:

171 “(a) Sections 1251, 1252, and 1304 of the Patient Protection and Affordable Care
172 Act, approved March 23, 2010 (124 Stat. 119; 42 U.S.C. §§ 18011, 18021, and 18024),
173 and sections 2701 through 2709, 2711 through 2719A, and 2794 of the Public Health
174 Service Act, approved July 1, 1944 (58 Stat. 682; 42 U.S.C. §§ 300gg, 300gg-1, 300gg-2,
175 300gg-3, 300gg-4, 300gg-5, 300gg-6, 300gg-7, 300gg-8, 300gg-9, 300gg-11, 300gg-12,
176 300gg-13, 300gg-14, 300gg-15, 300gg-15A, 300gg-16, 300gg-17, 300gg-18, 300gg-19,

177 300gg-19A, and 300gg-94), (collectively “federal health acts”) and any rules issued
178 pursuant to the federal health acts, as the sections and implementing regulations were in
179 effect on December 15, 2017, are incorporated by reference and shall apply to all
180 insurers, hospital and medical services corporations, health maintenance organizations,
181 and multiple employer welfare arrangements, including associations, professional
182 employer or employee organizations, or any other entities providing a health benefit plan
183 to a small employer as defined in section 101(42) of the Health Insurance Portability and
184 Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of
185 1998, effective April 13, 1999 (D.C. Law 12-209; D.C. Official Code § 31-3301.01(42)),
186 or an individual, that deliver or issue for delivery individual or group health insurance
187 policies, contracts, or certificates of coverage in the District.”.

188 (b) A new section 101a is added to read as follows:

189 “Sec. 101a. Applicability of federal health acts to multiple employer welfare
190 arrangements.

191 “(a) Requirements in the federal health acts incorporated by reference in section
192 101(a) that apply in the small group market apply to health benefit plans offered by
193 multiple employer welfare arrangements including associations, professional employer or
194 employee organizations, or any other entity, if the plan covers an employee of a small
195 employer in the District, as defined in section 101(42) of the Health Insurance Portability
196 and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act
197 of 1998, effective April 13, 1999 (D.C. Law 12-209; D.C. Official Code § 31-
198 3301.01(42)).

199 “(b) Requirements in the federal health acts incorporated by reference in section
200 101(a) that apply to insurers in the individual market apply to health benefit plans offered
201 by multiple employer welfare arrangements, including associations, professional
202 employer or employee organizations, or any other entities, if the plan covers an
203 individual in the District who is not an employee or dependent of a participating
204 employer.”.

205 Sec. 5. Fiscal impact statement.

206 The Council adopts the fiscal impact statement in the committee report as the
207 fiscal impact statement required by section 4a of the General Legislative Procedures Act
208 of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

209 Sec. 6. Effective date.

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

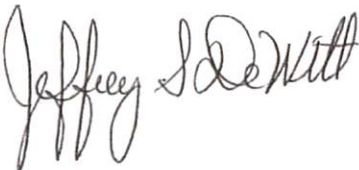
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: October 1, 2018

SUBJECT: Fiscal Impact Statement – Health Insurance Marketplace Improvement
Emergency Act of 2018

REFERENCE: Draft Bill as shared with the Office of Revenue Analysis on September
24, 2018

Conclusion

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill.

Background

The bill extends the District's regulation of health insurance coverage offered by multiple employer welfare arrangements (MEWA), including health insurance offered by an association or professional employer or employee organizations. The bill also places new requirements on short-term, limited duration health insurance policies and contracts sold in the District.

Under current District law, a "bona fide association" may offer group health insurance if the association and the insurance meet certain conditions. The bill adds¹ requirements that the association is domiciled and has its principal offices within the District and that the association shall not expand its membership based on geography.

MEWAs will be covered under the District's requirements for the individual health insurance market² if the plan covers an individual in the District who is not an employee (or dependent of an

¹ By amending the Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998, effective April 13, 1999 (D.C. Law 12-209; D.C. Code § 31-3303.01 *et seq.*).

² Including the requirements of the Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998, effective April 13, 1999; the Reasonable Health Insurance

The Honorable Phil Mendelson

FIS: "Insurance Modernization and Accreditation Omnibus Act of 2018," Draft Bill as shared with the Office of Revenue Analysis on September 27, 2018

employee) of a small or large employer. If such a plan covers an employee of a small employer, the District's requirements³ for small group health benefit plans will apply.

The bill authorizes the Commissioner of the Department of Insurance and Banking (DISB) to create rules grandfathering MEWAs in existence and operating in the District as of December 15, 2017 and impose additional requirements on such grandfathered plans.

MEWAs located outside of the District may not conduct any business in the District unless licensed in the District as an insurer, hospital and medical services corporation, fraternal benefit society or health maintenance organization.

The bill requires insurers to receive a certificate of authority from the Commissioner prior to providing any short-term, limited duration health insurance policy or contract. In addition, the bill imposes the following requirements on such policies and the insurers offering them:

- The insurer shall apply the same underwriting standards to all applicants
- The insurer shall not exclude pre-existing conditions from coverage nor deny coverage to an individual based on receiving treatment in the previous 12 months.
- The policy must be limited to three months and may not be extended or renewed. The insurer may not issue a short-term policy to an individual who had one in the previous nine months.
- The policy or contract must disclose that the coverage does not constitute minimal essential coverage for purposes of satisfying the District's individual responsibility requirement⁴.

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. DISB can absorb any new oversight responsibilities within its existing budget.

Ratemaking and Health Care Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-360; D.C. Code § 31-3311.10); and the Federal Health Reform Implementation and Omnibus Amendment Act of 2014, effective May 2, 2015 (D.C. Law 20-265; D.C. Code § 31-3101 *et. seq.*).

³ *ibid*

⁴ As required under the Health Insurance Requirement Act of 2018, Act 22-442, signed by the Mayor September 5, 2018

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL
KARL A. RACINE



Legal Counsel Division

MEMORANDUM

TO: Alana Intrieri
Executive Director
Office of Policy and Legislative Affairs

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

DATE: September 27, 2018

SUBJECT: Legal Sufficiency Review of Draft Bill, the "Health Insurance Marketplace Improvement Amendment Act of 2018, Accompanying Emergency and Temporary Versions, and Emergency Declaration Resolution (AL-18-400)

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

A handwritten signature in black ink, appearing to read "JMR/Janet Robins". The signature is written in a cursive, flowing style.

Janet M. Robins