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March 4, 2020

To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: Patricia F. O'Connor, Health Education and Advocacy Unit

Re: Senate Bill 727 (Insurance Law- Application to Direct Primary Care Agreements-
Exclusion): Letter of Concern

The HEAU is concerned about the risks of financial and physical harm to consumers if the Direct Primary Care Agreements (DPCAs) defined in Senate Bill 727 are allowed in Maryland. The bill would exempt DPCAs from the Insurance Article provisions that protect consumers from nonperformance, discrimination, insolvency and other problems that historically have occurred with unregulated health insurance plans.

The bill lacks necessary protections for consumers' financial and physical interests. For example, DPCAs would be allowed to decline to accept a patient whose "medical condition is such that the primary care provider is unable to provide the appropriate level of care" and may discontinue care simply by providing notice and opportunity to find another primary care provider (p.3, 1.19-26). Consumers needing frequent primary care visits will be drawn to the promise of DPCAs, i.e., unlimited access to a primary care provider at fees that would be less than meeting high deductibles, co-insurance and co-payments. But the bill's provisions suggest they may be declined as patients, or if accepted, terminated unilaterally without regulatory recourse.

The HEAU considers the financial provisions of the bill to be risky for consumers. For example, unearned funds are supposed to be returned to the consumer upon termination, but no process is defined. The amounts could be substantial because DPCAs may require consumers to pay 12 months of the periodic fee in advance. In addition, the bill provides that DPCAs would be allowed to charge their patients a periodic, set fee in exchange for unlimited access to primary care services (p.2, 1.5-7), yet the contract also must describe

“any ongoing care for which an additional fee will be charged” (p.2, l.24-28). DPCAs would also be allowed to “include a per-visit fee that is less than the monthly equivalent of the periodic fee” (p.3, l. 6-7). This confusing fee structure would allow variable billing practices which consumers could not reasonably contest without risking termination. Although the bill defines grounds for termination, the bill is unclear about the regulator responsible for addressing abuses by DPCAs in the event of unilateral terminations, or other consumer complaints.

We submit that regulatory oversight of DPCAs would be necessary because of the fiduciary nature of the physician/patient relationship and the imbalance of power in the relationship. Other concerns include the lack of an express requirement that fees be reasonable; termination provisions that do not reference the prohibition against patient abandonment; permissible grounds for physicians to decline or terminate patients without express reference to anti-discrimination protections; and permissible 12 month prepayment requirements imposed on patients without bonding or solvency requirements imposed on physicians (health clubs in Maryland that collect advance fees have bonding requirements).

In the event DPCAs are deemed not to constitute insurance subject to the MIA’s regulatory authority, we believe the Maryland Board of Physicians has the expertise to provide oversight and is uniquely qualified to oversee DPCAs which involve standards of care, ethics and business practices by physicians.

Regulations enacted by the Board in consultation with the Consumer Protection Division would be essential in establishing standards and remedial processes to protect consumers from unethical or unfair business practices.

Thank you for the opportunity to provide information to the Committee.

cc: Sponsor and Members of the Finance Committee