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MURIEL BOWSER

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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.

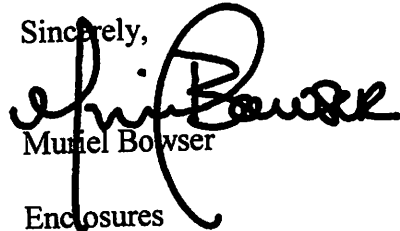
In June 2018, the U.S. Department of Labor issued a final rule that significantly changed the manner in which AHPs, which are a specific type of MEWA, are regulated. The rule makes it much easier for an association to be considered a single multi-employer plan under ERISA. Under this construction, AHPs 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.

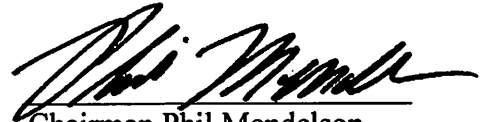
Accordingly, I urge the Council to act favorably and expeditiously on the proposed Bill.

Sincerely,

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

Muriel Bowser

Enclosures


Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, 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 Emergency 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

107 “(B) A fraternal benefit society;

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

109 or

110 “(D) Any combination of these entities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

176 300gg-19A, and 300gg-94), (collectively “federal health acts”) and any rules issued
177 pursuant to the federal health acts, as the sections and implementing regulations were in
178 effect on December 15, 2017, are incorporated by reference and shall apply to all
179 insurers, hospital and medical services corporations, health maintenance organizations,
180 and multiple employer welfare arrangements, including associations, professional
181 employer or employee organizations, or any other entities providing a health benefit plan
182 to a small employer as defined in section 101(42) of the Health Insurance Portability and
183 Accountability Federal Law Conformity and No–Fault Motor Vehicle Insurance Act of
184 1998, effective April 13, 1999 (D.C. Law 12-209; D.C. Official Code § 31-3301.01(42)),
185 or an individual, that deliver or issue for delivery individual or group health insurance
186 policies, contracts, or certificates of coverage in the District.”.

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

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

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

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

204 Sec. 5. Fiscal impact statement.

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

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 shall remain in effect for
212 no longer than 90 days, as provided for emergency acts of the Council of the District of
213 Columbia in section 412(a) of the District of Columbia Home Rule Act, approved
214 December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).