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Maryland

INSURANCE ADMINISTRATION

KATHLEEN A. BIRrane
Commissioner

TAMMY R. J. LONGAN
Acting Deputy Commissioner

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2471 Fax: 410-468-2020
Email: kathleen.birrane@maryland.gov
1-800-492-6116 TTY: 1-800-735-2258
www.insurance.maryland.gov

January 31, 2023

VIA EMAIL AND REGULAR MAIL

The Honorable Joseline A. Pena-Melnyk
Chair, House Health and Government Operations Committee
241 House Office Building
6 Bladen Street
Annapolis, MD 21401
joseline.pena.melnyk@house.state.md.us

Re: CHAP Program Working Group – Final Report

Dear Chair Pena-Melnyk:

Please accept this letter as the report of the Workgroup that you requested that the Maryland Insurance Administration (MIA) convene regarding the establishment of a Consumer Health Access Program for Mental Health and Addiction Care (the “CHAP Program”).

1. Background and Legislative History:

[SB460](#) was passed by the Senate in 2022, but did not receive a favorable report from the Health and Government Operations Committee of the House of Delegates.

SB460 proposed the establishment of the CHAP Program as an independent program, funded by the State, to provide certain consumer services to individuals seeking mental health and substance use disorder treatment. The consumer services include assistance with locating a provider, arranging covered services, obtaining a health plan, filing appeals and complaints, and providing legal representation, and include initiating litigation against state, federal and private (including commercial) health care plans. The CHAP Program would also collect data from consumers and government agencies, analyze the data, and utilize the data to provide advice to the General Assembly to address barriers to mental health and substance use disorder treatment.

The CHAP Program was structured as a “hub and spoke model,” with the University of Maryland School of Social Work servicing as an “incubator” entity, with functions being carried out primarily by non-government agencies engaged as “hubs” which would, in turn, engage “spokes” to assist with the performance of consumer services.

During the hearing on SB460 in HGO, objections and concerns were raised about the structure and scope of the CHAP Program as proposed. Consequently, Chair Pena-Melnyk requested that the MIA form a Workgroup to review the concerns raised about the CHAP Program to determine whether consensus legislation could be passed in the 2023 Legislative Session.

2. Identification of Issues and Formation of the Working Group

The MIA reviewed the legislative testimony and identified the following topics raised in opposition to the CHAP Program as proposed in SB 460.

- Scope of the hub’s activities and potential overlap with other state agencies;
- Privacy; and
- Nature of the hub, its budget, and oversight.

The detailed list of questions raised with respect to those topics is attached hereto at Tab 1.

The members of the Workgroup and the organizations that they represent are listed at Tab 2.

3. Summary of Workgroup Meetings

The first meeting was held on June 17, 2022. The purpose of the first meeting was to identify the issues raised with regard to the CHAP Bill that should be addressed by this Workgroup. During this meeting, it was suggested that the MIA research the availability and scope of programs that currently exist in Maryland to provide some or all of the services described in the CHAP Bill in order to identify gaps that remain. Workgroup members were invited to submit information on both resources that exist and gaps in resources to the MIA.

The second meeting was held on August 22, 2022. The MIA presented detailed information of programs that currently exist in Maryland that may provide some or all of the services described in the CHAP Bill and the gaps in services and service regions that exist despite those services. The MIA advised that its research was not complete as there are programs in development that were intended to address some of the services described in the CHAP Bill, such as 211 and 988. The MIA noted, however, that at present there is no centralized program or resource operating state-wide that could connect people to mental health and substance use disorder care and assist them to address health plan coverage for that care.

The third meeting was held on September 9, 2022. The Workgroup heard a presentation from the MIA on programs, such as CHAMP in New York, that provide services similar to the

program contemplated by the CHAP Bill and reviewed the definition of “Consumer Assistance Services” in the CHAP Bill to determine whether the Workgroup members disagreed on the scope of those services.

The fourth meeting was held on September 30, 2022. The discussion was focused on a presentation by Stephanie Campbell, Director of the New York State Behavioral Health Ombudsman Office and from Trishia Allen and Greg Meyer of the New York State Office of Addiction Services and Supports, regarding the New York CHAMP Program. The CHAP Bill was modeled on the CHAMP program. The Workgroup then continued its review of the CHAP Bill, starting with a discussion of the structure, legal status, and accountability of the Program contemplated by the CHAP Bill, including the responsibilities of the Incubator and Hub Entities.

The fifth meeting was held on October 25, 2022. During this meeting, the members continued the discussion of the appropriate structure of the program and where it should be housed. Senator Augustine and Delegate Cullison requested that the MIA submit a proposal of a program if established as an independent unit within MIA, similar to the MIA’s Consumer Education and Advocacy Unit. The members determined that the Workgroup would meet twice more, once in November and once in December, to discuss that proposal, before concluding.

The sixth meeting was held on November 22, 2022. Consistent with the request made by Senator Augustine and Delegate Cullison, Commissioner Birrane presented a draft Proposal for an ombudsman program that would assist Marylanders with accessing treatment and securing coverage for mental health and substance use disorder treatment that would be established as an independent unit of the Insurance Administration, with an independent executive director, advisory council, and budget to the workgroup members. As envisioned, the program would draw upon existing resources in the community, in governmental agencies, and among existing governmental grant recipients, but be designed to track program participants and assign them to specific care/coverage coordinators to provide continuity and consistency. During this meeting, the Workgroup members discussed the various aspects of the proposal, and it was determined that formal written comments would be a more efficient way of gathering input from the workgroup and the public. The workgroup agreed to submit written comments and questions by Monday, December 5th, 2022.

The seventh and final meeting of the SB0460 Workgroup was held on Thursday, December 22, 2022. Commissioner Birrane summarized the Draft Legislation prepared at the request of Senator Augustine and Delegate Cullison. The Workgroup members and interested parties commented on the draft, and there was discussion on the comments.

Workgroup Agendas, meeting materials, and written comments are available, by meeting date, at <https://insurance.maryland.gov/Consumer/Pages/workgroups.aspx>

4. Approaches Taken in Other States

The MIA researched programs in other states that might serve as a model for legislation in Maryland. A very brief summary of the programs follows.

New York

New York has a robust program to assist consumers with mental health and substance use disorder treatment needs, including connecting them to insurance. The MIA reviewed the legislation creating the New York program, and discussed the operation of the program with the relevant New York officials.

The NY CHAMP program is housed within a state agency, and uses a hub and spoke approach to provide services. The enacting statute creates the office of the independent substance use disorder and mental health ombudsman program operated within the office of addiction services and supports. The authority given to the ombudsman is fairly broad. It includes connecting New Yorkers to care providers and payment sources, including helping them to navigate health plan coverage. It also includes providing data and analysis to the state agencies with which it is affiliated and other policy makers. A link to their website can be found here: <https://www.cssny.org/programs/entry/champ>

As initially established, coverage assistance through CHAMP was focused on coverage under health insurance, as opposed to government or employer sponsored plans. The CHAMP Director explained that recent statutory revisions had broadened their remit. However, while CHAMP clearly helps its clients communicate with payers about coverage and assists clients to pursue administrative and contractual remedies where coverage is denied, CHAMP does not fund litigation against payers (including insurers) for civil claims. The CHAMP program refers individuals looking for representation to pursue civil claims in the courts to a New York lawyer referral program.

Maine

Maine does not appear to have a comprehensive state sponsored/funded behavioral health navigator service, but there is a state-funded hub and spoke treatment model for opioid use disorder overseen by the Department of Health and Human Services.

Maine had a failed bill in 2017 (HP0984, LD 1430, item 1, 128th Maine State Legislature) that would have required the Department of Health and Human Services to establish a statewide resource and referral center for any person seeking substance abuse treatment options, any family member or friend of a person currently receiving substance abuse treatment, any member of law enforcement, and any substance abuse treatment provider. The bill would have also required the Department to contract for evidence-based treatment for substance use disorders, including hub-and-spoke models.

The same year, the Maine legislature passed HP0653, LD 925, item 3, which did not require establishment of a statewide resource and referral center, but did require the Department of Health and Human Services to ensure that a continuum of evidence-based treatment and recovery support services for opioid use disorder is accessible to all people in the State through contracts with hubs and spokes. The bill also required the Department to work on a plan to create a statewide resource and referral center for substance use disorder treatment that uses the existing 211 Maine service, and links it with comprehensive, statewide information on available treatment and recovery resources.

Vermont

Vermont does not have a comprehensive state sponsored/funded behavioral health navigator service, but there is a state-funded hub and spoke treatment model for opioid use disorder overseen by the Department of Vermont Health Access.

Vermont's program is an integrated care model solely focused on treatment of opioid use disorder, and, specifically, medication assisted treatment. Though it uses the hub and spoke approach, it is not a consumer assistance program, it does not offer any services to help navigate coverage issues (through public or private insurance), and it is limited to opioid use disorder and does not coordinate treatment for any other MH/SUDs.

Ohio

The Ohio Mental Health Insurance Assistance Office (“Office”) was established within the Ohio Department of Insurance by Executive Order 2023-04D. The Executive Order established the Office to provide consumer education and to regulate insurers' compliance with mental health and addiction parity insurance laws.

The Office assists individuals, families, and health care providers who need help understanding and accessing MH/SUD benefits. The Office assists those with insurance, but also those who are uninsured or receive health care benefits through a government plan. The Office helps consumers understand their coverage, assists consumers with getting the most from mental health benefits for treatment, and will facilitate investigations if there are access issues due to insurance.

5. Conclusions Reached by the Workgroup

At the close of the final meeting, it was clear that there was consensus among all members that people who need mental health and substance use disorder treatment often struggle to find providers and, in addition, struggle to secure health plan coverage for the treatment that they need. There was also consensus that there is no currently functioning centralized resource to assist consumers to locate care and secure coverage. While many governmental, government

sponsored/funded, and private programs exist that may provide some of those services in some geographic regions, significant gaps exist.

There also was consensus among Workgroup members that a program that provides a centralized, state-wide, state-funded method for connecting consumers to care and assisting them to coordinate coverage and benefits for that care from their health plan should be developed and implemented. The Workgroup agreed that such a program should assist program participants to access and navigate existing consumer assistance programs (such as HEAU and the MIA's Consumer Complaint and Appeals and Grievance Division) to resolve coverage issues for plans within their remit. The Workgroup also agreed that the program should collect and analyze data and serve as a resource to the State and the General Assembly in identifying and proposing solutions for better, faster access to mental health and substance use disorder treatment, including failures by payors to meet their contractual and statutory obligations.

However, members of the Workgroup diverged with respect to the scope of the program's activities, the program's legal and organizational structure, and whether the program should be housed (at least initially) within a state agency. The nature of these disputes are expressed in the comments that were submitted in response to the proposal discussed during the sixth meeting and the draft bill discussed during the seventh meeting.

In summary:

The Workgroup reached a consensus on the following points:

- A problem exists for Marylanders seeking treatment for mental health and substance use disorders.

Individuals seeking this type of care do not have readily available resources to connect them with services within their provider network in real time. Most of these individuals need personalized assistance as soon as possible and often in emergency situations. The Workgroup agreed that assistance in finding the appropriate care from health care providers whose services would be covered by a health benefit plan is a need that is not currently met.

- Government intervention, at some level, is needed in order to address and resolve this problem.

The Workgroup agreed that government funding and resources would be needed at some level in order to address this issue.

- The program should analyze data and report its findings.

The Workgroup agreed that it is important to identify trends and review the activities of the Program through regular reports.

The Workgroup did not reach a consensus on the following points:

- The Workgroup disagreed on whether the Program should be completely independent, or within a state agency.

The members were divided on whether the Program should be established as a separate entity outside of state government, or whether it should be housed within a state agency. SB460 contemplated a “hub and spoke” model, with the University of Maryland, School of Social Work acting as an incubator to develop the “hub” and contracting with several private entities acting as the “spokes.”

Some of the members stated that a government entity would fall short of the Program’s objectives and create additional obstacles for those seeking care. Others felt that using existing resources would be more cost-efficient and allow the Program to be implemented quickly and seamlessly.

- Program Activities.

The members differed on the role that behavioral health navigators should play and how the Executive Director would utilize staff for the Program.

The members also differed on whether providing direct legal representation to consumers should be a primary purpose of the Program. The Proposal shared by the MIA did not include legal representation as a service provided by the Program, but addressed assistance with enforcement of contractual and legal rights at the administrative level by assisting participants to access and navigate existing governmental processes (such as filing a complaint with the MIA).

- Aspects of the proposed legislation.

The Workgroup had a robust discussion of the Proposal and Draft Legislation. As reflected in their comments, some members of the Workgroup and some interested persons objected to the Proposal and the Draft Legislation and felt strongly that CHAP should be adopted as proposed by SB460, with no significant changes. Other members of the Workgroup supported the Proposal and the Draft Legislation, with some clarifications and adjustments, but with the core structure and scope intact. The comments regarding both the Proposal and the Draft Legislation are detailed and thorough and the MIA believe that they should be considered as written, and not summarized.

6. Conclusion

The MIA was not requested to make any specific recommendations. We are honored to have been able to facilitate the discussion and to find areas of agreement that can move forward to become a program to assist Marylanders in need of treatment for mental health or substance use disorders. We look forward to working toward final legislation that can fill a vital role in helping patients.

In the meantime, the MIA is working within its current statutory authority through the Consumer Education and Advocacy Unit to help consumers connect to existing resources (such as 211) that can help them find mental health and substance abuse care and to obtain assistance with coverage questions and issues.

Sincerely,



Kathleen A. Birrane
Insurance Commissioner

cc: Senator Malcom Augustine – malcolm.augustine@senate.state.md.us
Delegate Robbyn Lewis – robbyn.lewis@house.state.md.us
Delegate Bonnie Cullison – bonnie.cullison@house.state.md.us

Preliminary Concerns Raised as to SB0460

- Scope of the hub's activities and potential overlap with other state agencies:
 - Should the scope of functions be limited to assisting clients with finding providers and care? For example, is providing legal representation an appropriate activity for this entity? Connecting people to covered care requires very different skills than litigating coverage issues and both are different than data analytics.
 - Assisting with enrolling in and understanding health coverage has a possible overlap with MHBE, navigators, and producers.
 - Assisting with filing complaints, including providing legal representation in court, has a possible overlap with HEAU as far as filing appeals and complaints.
 - Outreach and education have a possible overlap with CEAU and HEAU functions.
 - Evaluation of data, investigating complaints, and identifying possible non-compliance with MHPAEA are activities that overlap with the investigation functions of the MIA and the US DOL.

- Privacy:
 - The bill contains ambiguous language that could be read to require state agencies charged with investigating carriers, providers, or others to share confidential investigative information. Currently, documents may be confidential or subject to privilege. What is the proper scope of material that should be shared with the hub?
 - The entities involved would obtain highly sensitive information on individuals' personal financial and health information, specifically including behavioral health, and the limits on use and disclosure are not clear. The wording of the bill would not subject the hub or spokes to HIPAA.
 - What are the appropriate statutory limits on the use of information?
 - What are the appropriate cybersecurity and data security standards for the hub and spokes, including employees and volunteers?

- Nature of the hub, its budget, and oversight:
 - The type of entity needs to be defined: is it a state agency, quasi-state agency, or something else?
 - To whom is the hub accountable for ensuring it is fulfilling its statutory purposes and obligations? Is the hub subject to any oversight for mistakes and errors? Can it and its employees/volunteers be sued? Does it carry professional liability insurance?
 - The appropriation is mandated to be \$3 million. What is the impact on FY 2024, FY 2025, and FY 2026 budgets? Is it appropriate for a non-state entity to administer state funds? Is this more in the nature of a grant program?
 - What should be the limits and oversight on the hub's spending and procurement?

- Why is there no governance for the entity - No board, no executive director, no organizational directives?

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SB0460 Workgroup Membership:

- Senator Malcolm Augustine, Senate of MD
- Delegate Joseline Pena-Melnyk, MD House of Delegates
- Delegate Bonnie Cullison, MD House of Delegates
- Delegate Robbyn Lewis, MD House of Delegates
- Kathleen Birrane, Commissioner, MD Insurance Administration (MIA)
- Barbara Wilkins, MD Department of Budget and Management (DBM)
- Patricia O'Connor, Health Education and Advocacy Unit (HEAU)
- Kimberly Cammarata, HEAU
- Deborah Rivkin, CareFirst
- Neal Karkhanis, The League of Life and Health Insurers
- Kim Robinson, Cigna
- Allison Taylor, Kaiser Permanente
- Joseph Winn, United Healthcare
- Pam Kasemeyer, MedChi
- Dr. Joseph Adams, MD-DC Society of Addiction Medicine
- Morgan Mills, NAMI Maryland
- Michelle Tuten, University of Maryland School of Social Work's Center for Addiction Research, Education, and Service
- Dan Martin, Mental Health Association of Maryland
- Ann Ciekot, NCADD-Maryland
- Ellen Weber, Legal Action Center
- Kenyn Benjamin, 2-1-1
- Quinton Askew, 2-1-1