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TESTIMONY OF
KATHLEEN A. BIRRANE
INSURANCE COMMISSIONER
BEFORE THE
HEALTH AND HUMAN SERVICES SUBCOMMITTEE
OF THE
SENATE BUDGET AND TAXATION COMMITTEE
AND THE
TRANSPORTATION AND THE ENVIRONMENT SUBCOMMITTEE
OF THE
HOUSE APPROPRIATIONS COMMITTEE
FEBRUARY 4, 2021

Thank you, Subcommittee Chair and Members, for the opportunity to appear before you today. I am Kathleen A. Birrane., Maryland's Insurance Commissioner. With me today are Paula Keen, Chief Information Officer, Phil Ermer, Executive Director of Premium Tax and Company Licensing, and Godwin Ehirim, Director of Fiscal Services. Also with me today is Jay Coon, Deputy Commissioner, Greg Derwart, Chief of Staff, Van Dorsey, Principal Counsel, Michael Paddy, Director of Government Relations and Spencer Harris, Assistant Director of Fiscal Services.

I would like to thank Caleb Weiss of the Department of Legislative Services for his analysis of the Maryland Insurance Administration's (MIA) FY 2022 budget. I would also like to thank Bridget Patton of the Department of Budget and Management for her assistance in developing the Administration's FY 2022 budget

The Maryland Insurance Administration (MIA) is an independent unit of State government organized in accordance with Title 2, Subtitle 1 of the Insurance Article. The MIA is responsible for enforcing the laws governing the business of insurance within the State. The agency promulgates regulations to carry out the Insurance Article and issues bulletins and other guidance for the insurance industry and consumers of insurance products in the State. The MIA does not receive any money from the State's General Fund. The Administration is a specially funded state agency supported entirely through fees and assessments on the insurance industry.

The MIA has been asked to discuss with the committee if there are any continuing ramifications for the MIA's operations or budget in regards to our lease extension with the St. Paul Office Tower. The MIA does not anticipate any issues with regard to the lease. The

Board of Public Works has approved the 10-year lease under which the MIA is currently operating. It is not anticipated that the procedural issues raised with regard to the lease procurement handled by DGS will adversely impact the MIA. The MIA is not a party to the appeal, which is currently being handled by the Office of the Attorney General on behalf of DGS.

The MIA also has been asked to discuss with the committee the reason for the growing deficit in the Health Care Regulatory Fund (HCRF) and any corrective actions that are being taken. I took office on May 18, 2020, in the middle of the audit of the MIA being conducted by the Office of Legislative Auditors. Shortly after my arrival, I was informed through the auditors that the HCRF was deficient. As soon as I become aware, I initiated an internal investigation to verify the amount of the deficit, the reason for the deficit, and to devise a plan to correct it. What we determined was that the deficiency in the HCRF had accumulated over several years, because the Fiscal Services Unit (FSU) did not go through an annual process to establish the HCRF budget by considering the historic costs and expenses of the Appeals & Grievance Unit and projecting the needs of the HCRF based on that historic data. Rather, the FSU used the same budget amount from year to year to determine and made the assessment to the HCRF and, when the amount was insufficient, used the MIA's general operating funds to pay expenses. These advanced expenses were not tracked and incorporated into the next year's assessment. In order to prevent this from happening again, the MIA has adopted and implemented revised HCRF Procedures, which now require the FSU to identify the annual costs and expenses incurred by the MIA's Appeals & Grievance Unit, to determine the cost/expense and complaint trends, and to estimate future costs/expense and HCRF needs based on these considerations. Additionally, the procedures require the FSU to consider annually the HCRF fund balance deficit (or surplus) in its calculation of the HCRF assessment and to document the review and approval of the assessment calculation. The MIA will also separately report special fund balances at fiscal year-end closing. The MIA is also implementing an internal audit protocol which will include verification by the MIA's Examination and Auditing Unit that these processes are performed and performed accurately. The audit report will come directly to the Commissioner to assure full accountability and oversight. In addition to addressing how to prevent this from happening again, we have worked with counsel to develop a plan of recoupment that has been shared with the auditors. In essence, the MIA will recoup the deficiencies over five years. These amounts, as recovered, will be paid to the General Fund. This year's HCRF budget and assessments were determined based on the new procedures and included the first year's recoupment amount.

The MIA also has been asked to discuss with the committee the current balance being held in the Health Care Provider Rate Stabilization Fund (RSF) and provide an explanation as to why the MIA believes that these funds had to be retained. The RSF is funded by the premium taxes paid by certain HMOs and by MCOs. The MIA has historically retained a balance within the RSF account to reimburse to the HMOs and MCOs which overestimated and overpaid their annual premium tax and are entitled to a refund. Premium tax is assessed on a calendar year basis and carriers must pay estimated premium tax payments quarterly during the calendar year and then submit an annual tax return by March 15 of the following year (based on the prior year's premium). The amounts due in refunds are not known at fiscal year-end. That is primarily for two reasons. First, MCOs are subject to premium adjustments by Medicaid that can and do impact the amount of premium tax that the MCO owes. The Medicaid adjustments do not typically occur before June 30th, so MCO premium tax calculations and refund amounts are not fully known by June 30th. Additionally, the MIA's premium tax audit process, as outlined in §6-109(b) of the Insurance Article, allows for the completion of the premium tax audit within 3 years of the date the tax return is due. The MIA's current practice and procedure is to complete the premium tax audits by the end of August for the prior calendar year. While it would be possible while the RSF was ongoing to use new premium tax deposits into the RSF to pay refunds attributable to a prior year, the MIA did not believe that this was best. That consideration is moot, however, because the RSF is due to sunset in 2021 and there will be no future contributions of premium tax to the RSF, which will be wound up. Given that there will be no new funds incoming; the MIA must retain funds in the RSF to pay premium tax refunds.

The MIA has revised its RSF Procedures. The new Procedures require (1) that the refund estimate is calculated by taking the average refund amount of the prior two (2) fiscal years' refund requests, and (2) that the Fiscal Services Director document the estimate calculation, which will be double checked by the E&A Unit. This revised approach will assure that the MIA more closely approximates the funds needed to be retained for refund requests, ensure transfers (i.e. refunds) from the RSF fund remain within the same fiscal year, and ensure that funds are available during this final year of the RSF. Based on my conversations with them, I believe that this approach is acceptable to the auditors.

Thank you again for the opportunity to appear before you today. I am happy to address any questions you may have.