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November 2, 2023

Dear Chairman Hertel & Members of the Senate Health Policy Committee:

On behalf of our eleven health plans, I would like to thank you for your willingness to solicit input and comments on Senate Bills 633-637, which would establish a state-based exchange (SBE) and reinsurance program in Michigan.

Health plan members of the Michigan Association of Health Plans (MAHP) continue to lead the nation in advancing access to effective, affordable, and equitable health care. Public policy discussions surrounding state or federal health care exchange platforms where insurance can be sold and purchased are vital to improving access and affordability.

I want to thank Chairman Hertel for his leadership and willingness to take a measured, thoughtful, and deliberate approach to this critical issue. He, his office, and caucus policy staff have sought input, shared ideas, and have been willing to listen to various sentiments from our health plans on this subject matter.

MAHP has a unique and diverse set of health insurance providers that provide health care to customers nationwide and, more importantly, operate in states with established SBEs. Our association is uniquely qualified to share experiences and key policy elements for successfully implementing an SBE. Those elements are outlined in the attached document for your consideration.

Some of these elements are contained in Senate Bills 633-637. However, other elements are missing. Attached are several policy suggestions MAHP would like the committee to consider as you deliberate on this legislation. These changes would position Michigan as a national leader in providing superior access to affordable healthcare.

I want to thank you again for working with our health plans, who have vast experiences in navigating both federal and state exchange platforms, to share input to shape this important public policy discussion best.

Sincerely,

Christine Shearer
Deputy Director, Michigan Association of Health Plans



State-Based Exchange & Reinsurance Legislation (SB's 633-637) Summary & Suggested Changes

Senate Bill 633 (Senator Kevin Hertel): Creates a new Act (Michigan Health Insurance Exchange Act) to establish a state-based exchange (SBE) and set for the authorities granted to a governing board (a non-profit corporation entitled "the exchange", its executive director, and the Department of Insurance & Financial Services (DIFS) Director. The exchange is authorized to certify qualified health plans and establish fees on health plans for the operation of the SBE and the reinsurance program.

MAHP Suggested Changes:

- **Fees:** We applaud the capping of the assessment/user fee at 2.75% on health plans. However, we are concerned that this fee can increase by any amount with a $\frac{3}{4}$ affirmative vote of the SBE Board, especially now that the federal government has announced the federal exchange platform fee will be reduced to 2.50% in 2024. Furthermore, the proposed fee in SB 633 is only imposed on health plans to unilaterally subsidize the SBE and reinsurance program. This is concerning when considering the costs of the exchange and reinsurance program. DIFS has estimated that the cost of SBE would be roughly \$35 million annually. A fee on health plans, at a rate of 2.75%, would generate approximately \$70 million annually, leaving \$35 million to fund SBE promotion, navigation assistance, and a reinsurance program. According to DIFS's research, a \$25 million reinsurance program would reduce premiums by roughly 3%. **MAHP recommends language be added to this bill that would allow other sources of revenue, such as general funds or additional fees and assessments not imposed on health plans, to fund a reinsurance program and the exchange. MAHP would also suggest removing the $\frac{3}{4}$ vote to increase the fee.**
- **Transition Costs:** MAHP applauds the creation of an exchange fund to pay for transition costs. **MAHP would recommend that a supplemental appropriations bill be tie-barred to this legislation for purposes of dedicating general funds to the exchange fund.**
- **Implementation Date:** Section 209 of the bill requires the implementation of an SBE by January 1, 2025 (less than 14 months from now), and Section 203 allows the Director to move Michigan to an SBE on the federal platform immediately, which is highly concerning. Meanwhile, under the reinsurance bill (SB 637), DIFS is given more than seven months (after the passage of the bill) to submit a request for a federal 1332 waiver for a reinsurance program that will take countless months for the Centers for Medicare & Medicaid Services (CMS) to approve. MAHP has stated time and time again that our health plans members must understand how the reinsurance program will

work and how it will be paid for before our members will know if any migration from the federal exchange will result in more affordable insurance options for Michiganders.

Before migration to any alternative exchange platform, a reinsurance program that will lower premiums should be approved by the federal government, or, conversely, an SBE without a reinsurance program that has a lower fee/assessment rate than the federal exchange that will drive saving must be decided up. Either option will ensure savings are attained for consumers to make health insurance more affordable in Michigan.

Considering the legislative package requires a reinsurance program, MAHP argues strongly that a reinsurance program must be approved by the federal government before any exchange migration occurs. **As such, MAHP recommends language be added to this bill and the reinsurance bill (SB 637) that would require approval from the federal government for a reinsurance program before making the official migration and requiring insurers to sell on a new exchange platform.**

- **Enrollment:** Section 209 provides direct enrollment opportunities but does not expressly permit health plans to automatically re-enroll in a qualified health plan. **MAHP would suggest adding re-enrollment language to this section.**
- **Plan Offerings:** Section 211 currently empowers the exchange to develop a standardized plan similar to what has been done at the federal level. While member health plans would prefer to avoid a standardized plan, more concerning is any future limitation on the number of qualified health plans that could be offered on the exchange. **As such, MAHP would suggest adding language to prohibit the exchange from limiting the number of qualified health plan offerings.**
- **Protection of Confidential Information:** Customer information is sensitive and vital. As such, **MAHP would encourage adding language that would subject the exchange to protecting customer data from health plans per the federal Health Insurance Portability & Accountability Act of 1996.**
- **Open-ended Open Enrollment:** Section 211(e) allows the exchange to provide for open-ended open enrollment periods by $\frac{3}{4}$ vote of the SBE, which is very concerning for rate development and planning. At the very least, **MAHP would suggest that the authority surrounding additional special enrollment periods be granted to DIFS (not the exchange) through a formal public hearing process and be limited to no more than one other open enrollment period throughout the year.**
- **Due Process:** Considering the state is creating a standalone quasi-government non-profit entity with vast administrative authorities independent from specific state departments, **MAHP members believe language is necessary to insert in the bill (likely in Section 219) that would proscribe appropriate administrative recourse that would allow health plans to appeal decisions of the exchange for review by the Director of DIFS and the Administrative Procedures Act.**
- **Prohibition on Termination Fees:** Section 209(4) prohibits the exchange and health plans from imposing a charge on customers canceling their coverage, which is already banned under the ACA. However, under the ACA, health plans can restrict re-enrolling an existing customer if the customer hasn't paid their premium. If the language in Section 209(4) is to remain in the bill, **MAHP would suggest adding clarifying language that health plans can prohibit re-enrollment of a customer for premium non-payment.**

Senate Bill 637 (Senator Camilleri): Adds a new section (4306aa) to the Michigan Insurance Code to require DIFS to seek a 1332 waiver to establish a reinsurance program. After the bill is signed into law, DIFS would have 180 days to develop a draft application available for public review and comment. DIFS may make changes to the application based on public comments. Upon federal approval of the waiver, DIFS must implement a reinsurance program.

MAHP Suggested Changes:

- **Type of Reinsurance Program:** To optimize the affordability of qualified health plans offered on an SBE, MAHP recommends that the state seek and secure a federal 1332 waiver to run a claims-based state reinsurance program. States can seek federal approval for a claims-based and/or condition-based reinsurance programs. DIFS has independently [analyzed](#) the operation and expenses of running a claims-based reinsurance program. The bill's current version does not describe which type of reinsurance program DIFS can run. Considering DIFS has only performed independent research on developing a claims-based reinsurance program, **MAHP highly suggests that "claims-based" reinsurance be enumerated in the bill for market certainty and predictability.**
- **Cost of Reinsurance Program:** According to [research](#) conducted by DIFS, the costs of a Michigan claims-based reinsurance program would range between \$20-70 million annually, increasing yearly. This is a significant annual cost for such a program, and the question has always remained: how to fund it? Proponents of a reinsurance program have argued that the logical way to fund such a program is through cost savings achieved through a state-based exchange. However, under the current SBE bill (SB 633), the SBE can **only** impose assessments/fees on **health plans** to administer the exchange and fund a reinsurance program. DIFS has estimated that the cost of SBE would be roughly \$35 million annually. A fee on health plans at a rate of 2.75%, proposed under the main SBE bill, would generate approximately \$70 million annually, leaving a minimal \$35 million to fund SBE promotion, navigation assistance, and a reinsurance program. According to DIFS's research, a \$25 million reinsurance program would reduce premiums by roughly 3%. **MAHP recommends language be added to this bill and the main SBE bill that would allow other sources of revenue, such as general funds and additional fees and assessments not imposed on health plans, to fund a reinsurance program.**
- **Disclosures:** We applaud Subsection (2) of the bill that requires DIFS to provide and seek public comments on its 1332 waiver application within 180 days of its passage. **MAHP would also recommend that language be added to require copies of this application to be given to the relevant legislative committees that deliberate on these bills and that DIFS provides a clear written explanation to the full House & Senate Appropriations Committees on how the reinsurance program will be funded.**
- **Sunset Provision:** Under Subsection (3) of the draft bill, DIFS could amend its federal waiver at any point to seek approval for a reinsurance program. Such unconditional future authority, especially with changing administrations, is concerning and creates market uncertainty. Furthermore, additional legislative oversight of such a program would be prudent. **As such, MAHP highly encourages a sunset provision to be adopted that effectively repeals the bill after approval is given by the federal government or a date certain not to be extended beyond 2026.**

- **Prerequisite:** Under the proposed timeline outlined in the bill, the soonest a reinsurance program could be established and potentially approved by the federal government would be one year after the passage of the legislation. However, under the main SBE bill, the DIFS director is empowered to immediately move Michigan’s federal facilitated exchange platform to a state-based exchange on the federal platform until an SBE is fully operational. Furthermore, an SBE is required to be established by January 1, 2025 (Section 209 of SB 633). This is highly concerning and unpredictable.

Before migration to any exchange platform, a reinsurance program that will lower premiums should be approved by the federal government, or, conversely, an SBE without a reinsurance program that has a lower fee/assessment rate than the federal exchange that will drive saving must be decided up. Either option will ensure savings are attained for consumers to make health insurance more affordable in Michigan.

Considering the legislative package requires a reinsurance program, MAHP argues strongly that a reinsurance program be approved by the federal government before any exchange migration occurs. **As such, MAHP recommends language be added to this bill and the SBE bill (SB 633) that would require approval from the federal government for a reinsurance program before making the official migration and requiring insurers to sell on a new exchange platform.**

Senate Bill 636 (Senator Kevin Hertel): Amends section 2212a of the Michigan Insurance Code to require insurers to disclose in writing to customers any information specifically required by the newly formed non-profit “the exchange” (SBE) as part of the Summary of Benefits and Coverage (SBC).

MAHP Commentary: This section of the law was recently changed (SB 356/[PA 161 of 2023](#)) as part of the ACA Codification package just weeks ago. The section was completely rewritten and now codifies the federal Summary of Benefits and Coverage (SBC) to explain benefit coverages and the summary of benefits. Adding a new requirement for health plans to provide exchange-related information seems a little out of place when disclosing benefit and coverage policy information to consumers. However, if the intent is to provide consumers with information about Michigan’s SBE as part of their benefits and coverage, MAHP would offer the following suggestion to improve the bill:

- **DIFS Guidance:** Most health plans are accustomed to working with DIFS (state regulator) to comply with various department bulletins and directives related to consumer disclosures. This bill requires health plans to monitor and track a non-profit quasi-state entity for additional rules and regulations about important consumer disclosures. If additional rules on consumer disclosure requirements from the SBE Board are passed that are necessary as part of a customer’s summary of benefits and coverages; perhaps DIFS could issue subsequent guidance via bulletins or directives to health plans directly. **As such, MAHP would recommend adding language at the end of the subset (n) on page 3 by saying, “as directed by DIFS.”**
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MAHP'S KEY POLICY ELEMENTS FOR A STATE-BASED EXCHANGE

BACKGROUND

As part of the Michigan Association of Health Plans (MAHP) 2023 Strategic Plan, the Innovation, Competition, and Exchange (ICE) Committee has been charged with identifying key policy consensus elements to include in a State-Based Exchange (SBE) bill to take an active role in future policy discussions. Based upon input from ICE Committee members, below are the key policy elements that have been identified:

FEDERAL 1332 WAIVER REINSURANCE PROGRAM PREREQUISITE

To optimize the affordability of qualified health plans offered on an SBE, MAHP recommends that the state seek and secure a federal 1332 waiver to run a claims-based state reinsurance program. To ensure the cost-effective transition to an SBE for customers and plans, we recommend that a federal 1332 waiver be considered a prerequisite for creating an SBE and that the bill's effective date be contingent upon a waiver acquisition.

FEES

To successfully operate an SBE, nearly every state charges participating health plans a fee based upon a percentage of premiums collected on the SBE. The federal marketplace fee charged to participating health plans is 2.75% of premiums collected. As such, any SBE fee imposed on participating health plans should be lower than the national fee to ensure an SBE operates more efficiently and cost-effectively for customers.

GOVERNANCE STRUCTURE

Upon review of 18 different SBE governing structures, MAHP recommends that an SBE governance structure be modeled after Pennsylvania, where there is an 11-voting member board with representation from health plans, provider-sponsored health plans, consumers, and individuals that have relevant experience with the individual market. We also recommend an advisory board comprised of all health plans participating in the exchange, employer groups, and medical stakeholders.

TRANSITION COST RECOVERY

To assist with the migration from the federal exchange to an SBE, we recommend that the state consider a small pool of state resources that health plans could seek for administrative cost recovery to ensure the affordability of qualified health plans on the newly established SBE.

RATING CRITERIA

To ensure predictable, objective, and nationally accepted best practices, MAHP recommends that reasonable guardrails be placed around any criteria established to rate qualified health plans on the exchange. As such, the requirements should be modeled and or reflect either the Star quality rating system administered by CMS for plans on the federal marketplace or quality criteria in place for Medicaid health plans.

ELIMINATE SHOP

Avoid a Small Business Health Options Program (SHOP) from an SBE.

PROTECTION OF CONFIDENTIAL INFORMATION

Ensure health plan and customer information that may be required under an SBE (such as financial disclosures, claims payment policies, rating practices, payments for out-of-network, etc.) is confidential and protected.

LIMITS ON ADMINISTRATIVE AUTHORITY

The statutory administrative authority granted to the SBE governing board or state departments should not be broad and sweeping. Such authority must be carefully delegated, and appropriate administrative and legal due process should be granted to participating health plans.

DUE PROCESS

If the state creates a separate standalone quasi-government board with administrative authorities independent from specific state departments, MAHP would encourage venues for administrative due diligence by allowing health plans to appeal decisions of the SBE board for review by the Director of DIFS. If a health plan is aggrieved by the final judgment or inaction of the DIFS Director, health plans should be able to seek due process under the administrative procedures act and explore other legal avenues.