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**TESTIMONY OF ERIC A. CIOPPA
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In Opposition to L.D. 352

**“An Act To Maintain the Integrity of the Individual
and Small Group Health Insurance Markets”
Presented by Representative Joshua Morris**

**Before the Joint Standing Committee on Health Coverage,
Insurance & Financial Services
February 25, 2021 at 11:00 a.m.**

Senator Sanborn, Representative Tepler, and members of the Committee,
I am Superintendent of Insurance Eric Cioppa. I am here today to testify in
opposition to L.D. 352.

This bill would substantially scale back the reforms enacted last year by the
Made for Maine Health Coverage Act,¹ by repealing the pooled market for
individual and small group health insurance and by making the “Clear Choice”
standardized cost-sharing designs optional.

¹ P.L. 2019, ch. 653 (LD 2007).



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First, current law provides that beginning in 2022, provided that two essential preconditions are satisfied, Maine’s individual and small group health insurance markets would be combined into one single pooled market.² The law provides further that once the markets are pooled, the entire pooled market will share the benefits of the subsidized reinsurance coverage provided by the Maine Guaranteed Access Reinsurance Association (MGARA), which currently covers only the individual market.³ However, implementation of the pooled market is contingent on a finding by the Superintendent that both individual and small business policyholders would benefit from pooling the individual and small group markets and extending MGARA’s reinsurance to small group coverage, and it is also contingent on the approval by two federal agencies of an amendment to the innovation waiver that Maine has been granted, under Section 1332 of the Affordable Care Act (ACA), to provide a share of Maine’s ACA funding to MGARA.

This bill would terminate that process by repealing the enabling legislation for the pooled market. The individual and small group markets would remain separate, and MGARA would remain limited to the individual market. The bill would also eliminate the provision allowing MGARA to change its structure from a prospective to a retrospective program in the event that the pooled market is not implemented. The difference is that a retrospective program, which is the most common structure for subsidized reinsurance pools, pays a share of all high-cost claims, while a prospective program, used only by Maine and Alaska, covers only

² 24-A M.R.S. § 2792.

³ 24-A M.R.S. § 3958(1), *as amended by* P.L. 2019, ch. 653.

policies that have been identified in advance as high-risk policies, based either on a medical diagnosis or on the insurer's decision to pay a premium for the coverage.

The other thing the bill would do is to amend the Clear Choice Design law to make participation in the program optional rather than mandatory for individual and small group health insurance carriers. Under current law, beginning in 2022, all individual and small group health plans offered in Maine, with limited exceptions, must conform to one of the standardized cost-sharing designs that are being developed by the Bureau of Insurance following extensive stakeholder consultations. The goal, as set forth in the statute, is “to reduce consumer confusion and provide meaningful choices for consumers by promoting a level playing field on which carriers compete on the basis of price and quality.”⁴ The exception is that in addition to the Clear Choice plans that a carrier offers, it may also offer up to three alternative plans as long as the carrier demonstrates that the alternative plan offers significant consumer benefits and does not result in adverse selection.⁵ There appears to be a technical inconsistency in the bill, because it would repeal the language that requires carriers to offer Clear Choice plans, but would not change the language elsewhere in the bill that limits the number of alternative plans and allows them only in markets where the carrier is also offering Clear Choice plans at the same “metal level”: that is, bronze, silver, gold, or platinum coverage.

We oppose the repeal of the pooled market because the health insurance market for small business in Maine is under serious stress and might already be in

⁴ 24-A M.R.S. § 2793.

⁵ 24-A M.R.S. § 2793(4).

a death spiral. Small employers are currently responsible for paying the assessments that fund MGARA but receive none of the benefit. As discussed earlier, there are already guardrails built into the process. Implementation will not go forward unless both state and federal regulators, after conducting thorough public consultation and actuarial and economic analysis, find that the pooled market with the expanded MGARA program will benefit both markets. In addition, current law requires the Superintendent to conduct an analysis of alternative proposals to improve the stability and affordability of the small group market if the pooled market does not go forward. The bill, by contrast, repeals the entire program and provides no alternative proposals to aid the small group insurance market.

We also oppose the changes to the Clear Choice program. We have conducted a lengthy series of stakeholder consultations, and worked hard with representatives of the carrier, producer, consumer, and small business communities to develop a range of options to meet market demand, and carriers are also allowed to add three alternative designs to their product portfolios if the Clear Choice options are insufficient. The effect of the bill would be to change Clear Choice from the marketplace standard to making it merely one option among many. Although this would increase consumer choice, it would also reduce market transparency, and make it more difficult for individuals, families, and small businesses to engage in meaningful comparison shopping when they buy health insurance. By diluting the presence of Clear Choice plans in the market, the bill would make the Clear Choice program more closely resemble the “standard and basic” plans that carriers were required to offer alongside their regular product portfolios in the 1990s and the early 2000s. Because these plans were only a small

niche market and were not competitively priced or promoted by the carriers, they never fulfilled their intended purpose, and the program was eventually repealed.

Thank you, I would be glad to answer any questions now or at the work session.