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June 8, 2017

VIA ELECTRONIC MAIL AND HAND DELIVERY

Sen. John Alario (apa.senatepresident@legis.la.gov)
President of the Senate
State Capitol
P.O. Box 94183
Baton Rouge, LA 70804-4183

Rep. Taylor Barras (apa.housespeaker@legis.la.gov)
Speaker of the House
State Capitol
P.O. Box 44486
Baton Rouge, LA 70804-4486

Rep. Cameron Henry (apa.h-app@legis.la.gov)
Chairman, House Appropriations Committee
State Capitol
P.O. Box 44486
Baton Rouge, LA 70804

Sen. Eric LaFleur (apa.s-fin@legis.la.gov)
Chairman, Senate Finance Committee
State Capitol
P.O. Box 94183
Baton Rouge, LA 70804-4183

RE: Comment on Office of Group Benefit's Notice of Intent

Dear Sen. Alario, Sen. LaFleur, Rep. Barras, and Rep. Henry:

The Office of Group Benefits (OGB) submitted a Notice of Intent (NOI) for rulemaking to the State Register on May 10, 2017 which amends Title 32 of the Louisiana Administrative Code and shall become effective January 1, 2018. The Department of Justice (DOJ) has several concerns with the proposed changes; specifically, spousal surcharge, tobacco/nicotine surcharge and offering insurance coverage to unmarried grandchildren of an enrollee who reside with the grandparent without requiring legal custody. Also, our agency has also been contacted by Retirees regarding the elimination of OneExchange, an OGB-sponsored Medicare Plan, effective December 31, 2017.

In accordance with RS 42:857 Authorization for Surcharge, OGB is permitted to impose surcharges on *employers*, not enrollees. The DOJ is concerned the proposed surcharges are in violation of current statute as it is not permissible for OGB to impose surcharges on enrollees.

In addition, there are concerns about the due process implications of the retroactive termination provision associated with the surcharges, which as stated above cannot be assessed on employees. There is also an assumption contained in the rule that all members are smokers and all spouses have other coverage which is arbitrary and capricious and has no basis in law.

Furthermore, R.S. 22:1063 B(1) prohibits discrimination against participants based on health status, including but not limited to, requiring an individual to pay a premium or contribution which is greater than a similarly situated individual based on any health status-related factor. OGB's implementation of a tobacco/nicotine surcharge discriminates against plan participants who are smokers. Both of these proposed regulations in the NOI, in addition to being in direct conflict with positive law, would also exceed the scope of OGB's permissible regulatory authority pursuant to the Louisiana Administrative Procedures Act (LAPA) and raise separation of powers issues.

The DOJ is concerned the changes related to grandchildren were not presented to or voted on by the OGB Policy and Planning Board based on published meeting minutes and in accordance with ACT 146 (2015 Session). The NOI does not provide the financial impact to OGB's fund balance or State employers. And additionally, the proposed change is inconsistent with RS 22:1002 E(2) which requires the enrollee to have legal custody of the grandchild and also reside with the grandparent. This proposed regulation, in addition to exceeding the regulatory scope of OGB's permitted rulemaking authority, does not appear to comply with the requirements of the LAPA regarding the economic impact of the rules.

Lastly, the elimination of the OneExchange plans for over 500 Medicare Retirees was not presented to the OGB Policy and Planning Board based on published meeting minutes and in accordance with ACT 146 (2015 Session). The financial impact on the State, as well as the Retiree is expected to increase if the Retiree enrolls in an OGB self-insured plan. The member letter indicated the Retirees Health Reimbursement Account (HRA) balance would effectively be transferred to the Pelican HRA 1000 plan if the Retiree elects this plan for enrollment or, more importantly, the funds would be forfeited if the Retiree does not elect the stated plan. DOJ is concerned OGB does not have the authority to forfeit members funds, nor have the ability to make this type of plan change without being authorized by law or, at a minimum promulgated by rule pursuant to the LAPA.

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The DOJ has communicated these concerns to OGB as a comment during the comment period. Based on the above concerns, and the likelihood of litigation regarding these changes, DOJ recommends the Joint Legislative Committee on the Budget (JLCB) call an Oversight meeting to discuss the proposed changes.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth B. Murrill", written in a cursive style.

Elizabeth B. Murrill
Solicitor General