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CORRECTED LETTER

April 14, 2015

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: Senate Bill 416 and House Bill 838 "Health Insurance – Coverage for Infertility Services"

Dear Governor Hogan:

Senate Bill 416 and House Bill 838 amend the in vitro fertilization mandate to address the fact that the current requirements for coverage make it impossible for any woman in a same sex marriage to qualify for the mandated benefit. To achieve this, it was necessary to alter the requirement that a spouse's sperm be used for the in vitro fertilization in situations involving women in same sex couples. While this change was necessary to alleviate the discrimination against women in same sex couples, it created an inequality between these same sex couples, who can now qualify for the benefit if they meet the other requirements, and opposite sex couples in which the husband is unable to produce sperm, who cannot qualify for the benefit. In short, in fixing one source of differential treatment on the basis of sexual orientation, the bill inadvertently created another. Discrimination on the basis of sexual orientation in plans covered by the Affordable Care Act is prohibited by that Act, *see* Letter from Leon Rodriguez, Director, Office of Civil Rights, dated July 12, 2012, interpreting 42 U.S.C. section 18116. Whether the differential treatment resulting

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from the bills would violate the Affordable Care Act would be a matter of first impression, and it is not clear how a court would rule. Thus, it may be desirable for the General Assembly to address this disparity in legislation next session.

Very truly yours,

A handwritten signature in cursive script, reading "Brian E. Frosh".

Brian E. Frosh
Attorney General

BEF/SB/kk

cc: The Honorable John C. Wobensmith
Joseph M. Getty
Karl Aro