

# SENATE BILL 124

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By: **Senator Feldman**

Introduced and read first time: January 9, 2020

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Health Benefit Exchange – Establishment of a State–Based Health**  
3 **Insurance Subsidies Program**

4 FOR the purpose of requiring that a certain assessment be used to fund the State  
5 Reinsurance Program and the State–Based Health Insurance Subsidies Program;  
6 requiring the Maryland Health Benefit Exchange to allocate certain funds between  
7 the State Reinsurance Program and the State–Based Health Insurance Subsidies  
8 Program in a certain manner; altering the purpose of the Maryland Health Benefit  
9 Exchange Fund to include providing funding for the establishment and operation of  
10 the State–Based Health Insurance Subsidies Program; providing that the operation  
11 and administration of the State–Based Health Insurance Subsidies Program may  
12 include certain functions delegated to certain third parties; altering the contents of  
13 the Fund; altering the purposes for which the Fund may be used; requiring the Board  
14 of Trustees of the Exchange to maintain a separate account within the Fund for the  
15 State–Based Health Insurance Subsidies Program; clarifying that certain funds  
16 received from the federal government under a certain waiver may be used only for  
17 the purposes of funding the State Reinsurance Program; requiring the Exchange, in  
18 consultation with the Maryland Insurance Commissioner and as approved by the  
19 Board, to establish and implement a State–Based Health Insurance Subsidies  
20 Program to provide subsidies to individuals for the purchase of health benefit plans  
21 in the individual health insurance market; requiring the State–Based Health  
22 Insurance Subsidies Program to be designed to reduce the amount that individuals  
23 pay for certain health benefit plans in the individual health insurance market;  
24 requiring the Exchange, in consultation with the Commissioner and as approved by  
25 the Board and based on available funds, to establish certain parameters for a certain  
26 year and each subsequent calendar year; authorizing the Exchange, in consultation  
27 with the Commissioner and as approved by the Board, to alter the parameters under  
28 certain circumstances; providing that, beginning on a certain date, funding for the  
29 State–Based Health Insurance Subsidies Program may be made by using certain  
30 funds; requiring the Exchange to adopt regulations on or before a certain date;  
31 requiring the Board, in consultation with the Commissioner and as approved by the

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Board, to make a certain determination concerning a certain waiver and apply for a  
2 certain waiver under certain circumstances on or before a certain date; and generally  
3 relating to the State-Based Health Insurance Subsidies Program.

4 BY repealing and reenacting, with amendments,

5 Article – Insurance

6 Section 6–102.1 and 31–107

7 Annotated Code of Maryland

8 (2017 Replacement Volume and 2019 Supplement)

9 BY adding to

10 Article – Insurance

11 Section 31–122 and 31–123

12 Annotated Code of Maryland

13 (2017 Replacement Volume and 2019 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

15 That the Laws of Maryland read as follows:

16 **Article – Insurance**

17 6–102.1.

18 (a) This section applies to:

19 (1) an insurer, a nonprofit health service plan, a health maintenance  
20 organization, a dental plan organization, a fraternal benefit organization, and any other  
21 person subject to regulation by the State that provides a product that:

22 (i) is subject to § 9010 of the Affordable Care Act; and

23 (ii) may be subject to an assessment by the State; and

24 (2) a managed care organization authorized under Title 15, Subtitle 1 of  
25 the Health – General Article.

26 (b) The purpose of this section is to assist in the stabilization of the individual  
27 health insurance market by assessing a health insurance provider fee that is attributable  
28 to State health risk for calendar years 2019 through 2023, both inclusive, as provided for  
29 under subsection (c) of this section.

30 (c) (1) In calendar year 2019, in addition to the amounts otherwise due under  
31 this subtitle, an entity subject to this section shall be subject to an assessment of 2.75% on  
32 all amounts used to calculate the entity's premium tax liability under § 6–102 of this  
33 subtitle or the amount of the entity's premium tax exemption value for calendar year 2018.

34 (2) In calendar years 2020 through 2023, both inclusive, in addition to the

1 amounts otherwise due under this subtitle, an entity subject to this section shall be subject  
2 to an assessment of 1% on all amounts used to calculate the entity's premium tax liability  
3 under § 6–102 of this subtitle or the amount of the entity's premium tax exemption value  
4 for the immediately preceding calendar year.

5 (3) The assessments required in paragraphs (1) and (2) of this subsection  
6 are for products that:

7 (i) are subject to § 9010 of the Affordable Care Act; and

8 (ii) may be subject to an assessment by the State.

9 (4) The calculation of the assessments required under paragraphs (1) and  
10 (2) of this subsection shall be made without regard to:

11 (i) the threshold limits established in § 9010(b)(2)(A) of the  
12 Affordable Care Act; or

13 (ii) the partial exclusion of net premiums provided for in §  
14 9010(b)(2)(B) of the Affordable Care Act.

15 (d) (1) Notwithstanding § 2–114 of this article, the assessment required under  
16 this section shall be distributed by the Commissioner to the Maryland Health Benefit  
17 Exchange Fund established under § 31–107 of this article.

18 (2) **THE ASSESSMENT REQUIRED UNDER THIS SECTION SHALL BE**  
19 **USED TO FUND THE STATE REINSURANCE PROGRAM ESTABLISHED UNDER § 31–117**  
20 **OF THIS ARTICLE AND THE STATE–BASED HEALTH INSURANCE SUBSIDIES**  
21 **PROGRAM ESTABLISHED UNDER § 31–122 OF THIS ARTICLE.**

22 (3) **THE MARYLAND HEALTH BENEFIT EXCHANGE SHALL ALLOCATE**  
23 **THE FUNDS COLLECTED UNDER THIS SECTION BETWEEN THE STATE REINSURANCE**  
24 **PROGRAM AND THE STATE–BASED HEALTH INSURANCE SUBSIDIES PROGRAM IN A**  
25 **MANNER THAT MAXIMIZES THE LONG–TERM AFFORDABILITY OF HEALTH PLANS IN**  
26 **THE INDIVIDUAL MARKET.**

27 31–107.

28 (a) There is a Maryland Health Benefit Exchange Fund.

29 (b) (1) The purpose of the Fund is to:

30 (i) provide funding for the operation and administration of the  
31 Exchange in carrying out the purposes of the Exchange under this title; [and]

32 (ii) provide funding for the establishment and operation of the State

1 Reinsurance Program authorized under this title; AND

2 **(III) PROVIDE FUNDING FOR THE ESTABLISHMENT AND**  
3 **OPERATION OF THE STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM**  
4 **AUTHORIZED UNDER THIS TITLE.**

5 (2) The operation and administration of the Exchange [and], the State  
6 Reinsurance Program, **AND THE STATE-BASED HEALTH INSURANCE SUBSIDIES**  
7 **PROGRAM** may include functions delegated by the Exchange to a third party under law or  
8 by contract.

9 (c) The Exchange shall administer the Fund.

10 (d) (1) The Fund is a special, nonlapsing fund that is not subject to § 7-302 of  
11 the State Finance and Procurement Article.

12 (2) The State Treasurer shall hold the Fund separately, and the  
13 Comptroller shall account for the Fund.

14 (e) The Fund consists of:

15 (1) any user fees or other assessments collected by the Exchange;

16 (2) all revenue deposited into the Fund that is received from the  
17 distribution of the premium tax under § 6-103.2 of this article;

18 (3) income from investments made on behalf of the Fund;

19 (4) interest on deposits or investments of money in the Fund;

20 (5) money collected by the Board as a result of legal or other actions taken  
21 by the Board on behalf of the Exchange or the Fund;

22 (6) money donated to the Fund;

23 (7) money awarded to the Fund through grants;

24 (8) any pass-through funds received from the federal government under a  
25 waiver approved under § 1332 of the Affordable Care Act;

26 (9) any funds designated by the federal government to provide reinsurance  
27 to carriers that offer individual health benefit plans in the State;

28 (10) any funds designated by the State to provide reinsurance to carriers  
29 that offer individual health benefit plans in the State;

1           **(11) ANY FUNDS DESIGNATED BY THE STATE TO PROVIDE**  
2 **STATE-BASED HEALTH INSURANCE SUBSIDIES TO INDIVIDUALS IN THE STATE;**

3           **[(11)] (12)** any federal funds received in accordance with § 31-121 of this  
4 title for the administration of small business tax credits; and

5           **[(12)] (13)** any other money from any other source accepted for the benefit  
6 of the Fund.

7           (f) The Fund may be used only:

8           (1) for the operation and administration of the Exchange in carrying out  
9 the purposes authorized under this title; **[and]**

10           (2) for the establishment and operation of the State Reinsurance Program;

11 **AND**

12           **(3) FOR THE ESTABLISHMENT AND OPERATION OF THE**  
13 **STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM.**

14           (g) (1) The Board shall maintain separate accounts within the Fund for  
15 Exchange operations **[and]**, for the State Reinsurance Program, **AND FOR THE**  
16 **STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM.**

17           (2) Accounts within the Fund shall contain the money that is intended to  
18 support the purpose for which each account is designated.

19           (3) Funds received from the distribution of the premium tax under §  
20 6-103.2 of this article shall be placed in the account for Exchange operations and may be  
21 used only for the purpose of funding the operation and administration of the Exchange.

22           (4) The following funds may be used only for the purposes of funding the  
23 State Reinsurance Program:

24           (i) any pass-through funds received from the federal government  
25 under a waiver approved under § 1332 of the Affordable Care Act **TO PROVIDE**  
26 **REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN**  
27 **THE STATE;**

28           (ii) any funds designated by the federal government to provide  
29 reinsurance to carriers that offer individual health benefit plans in the State; and

30           (iii) any funds designated by the State to provide reinsurance to  
31 carriers that offer individual health benefit plans in the State.

32           (h) (1) Expenditures from the Fund for the purposes authorized by this

1 subtitle may be made only:

2 (i) with an appropriation from the Fund approved by the General  
3 Assembly in the State budget; or

4 (ii) by the budget amendment procedure provided for in Title 7,  
5 Subtitle 2 of the State Finance and Procurement Article.

6 (2) Notwithstanding § 7–304 of the State Finance and Procurement Article,  
7 if the amount of the distribution from the premium tax under § 6–103.2 of this article  
8 exceeds in any State fiscal year the actual expenditures incurred for the operation and  
9 administration of the Exchange, funds in the Exchange operations account from the  
10 premium tax that remain unspent at the end of the State fiscal year shall revert to the  
11 General Fund of the State.

12 (3) If operating expenses of the Exchange may be charged to either State  
13 or non–State fund sources, the non–State funds shall be charged before State funds are  
14 charged.

15 (i) (1) The State Treasurer shall invest the money of the Fund in the same  
16 manner as other State money may be invested.

17 (2) Any investment earnings of the Fund shall be credited to the Fund.

18 (3) Except as provided in subsection (h)(2) of this section, no part of the  
19 Fund may revert or be credited to the General Fund or any special fund of the State.

20 (j) A debt or an obligation of the Fund is not a debt of the State or a pledge of  
21 credit of the State.

22 **31–122.**

23 **(A) THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER AND AS**  
24 **APPROVED BY THE BOARD, SHALL ESTABLISH AND IMPLEMENT A STATE–BASED**  
25 **HEALTH INSURANCE SUBSIDIES PROGRAM TO PROVIDE SUBSIDIES TO INDIVIDUALS**  
26 **FOR THE PURCHASE OF HEALTH BENEFIT PLANS IN THE INDIVIDUAL HEALTH**  
27 **INSURANCE MARKET.**

28 **(B) THE STATE–BASED HEALTH INSURANCE SUBSIDIES PROGRAM SHALL**  
29 **BE DESIGNED TO REDUCE THE AMOUNT THAT INDIVIDUALS PAY FOR HEALTH**  
30 **BENEFIT PLANS IN THE INDIVIDUAL HEALTH INSURANCE MARKET.**

31 **(C) (1) BASED ON AVAILABLE FUNDS, THE EXCHANGE, IN CONSULTATION**  
32 **WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL ESTABLISH**  
33 **SUBSIDY ELIGIBILITY AND PAYMENT PARAMETERS FOR CALENDAR YEAR 2021 AND**  
34 **EACH SUBSEQUENT CALENDAR YEAR.**

1           **(2) THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER**  
2 **AND AS APPROVED BY THE BOARD, MAY ALTER THE PARAMETERS ESTABLISHED IN**  
3 **ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION AS NECESSARY TO**  
4 **SECURE FEDERAL APPROVAL FOR A WAIVER SUBMITTED IN ACCORDANCE WITH §**  
5 **31-123 OF THIS TITLE.**

6           **(D) BEGINNING JANUARY 1, 2021, FUNDING FOR THE STATE-BASED**  
7 **HEALTH INSURANCE SUBSIDIES PROGRAM MAY BE MADE BY USING ANY FUNDS**  
8 **DESIGNATED BY THE STATE TO PROVIDE SUBSIDIES TO INDIVIDUALS WHO MEET**  
9 **THE SUBSIDY ELIGIBILITY AND PAYMENT PARAMETERS ESTABLISHED UNDER**  
10 **SUBSECTION (C) OF THIS SECTION.**

11           **(E) ON OR BEFORE JANUARY 1, 2021, THE EXCHANGE SHALL ADOPT**  
12 **REGULATIONS IMPLEMENTING THE PROVISIONS OF THIS SECTION.**

13 **31-123.**

14           **ON OR BEFORE SEPTEMBER 1, 2020, THE EXCHANGE, IN CONSULTATION WITH**  
15 **THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL:**

16           **(1) DETERMINE WHETHER THE ESTABLISHMENT OF THE**  
17 **STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM REQUIRES THE STATE**  
18 **TO APPLY TO AND RECEIVE APPROVAL FROM THE U.S. SECRETARY OF HEALTH AND**  
19 **HUMAN SERVICES FOR A STATE INNOVATION WAIVER UNDER § 1332 OF THE**  
20 **AFFORDABLE CARE ACT; AND**

21           **(2) IF THE EXCHANGE DETERMINES THAT A STATE INNOVATION**  
22 **WAIVER IS REQUIRED TO ESTABLISH THE STATE-BASED HEALTH INSURANCE**  
23 **SUBSIDIES PROGRAM, APPLY FOR THE STATE INNOVATION WAIVER.**

24           **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July**  
25 **1, 2020.**