

SENATE BILL 124

C3

01r0680
CF HB 196

By: ~~Senator Feldman~~ Senators Feldman, Augustine, Beidle, Benson, Hayes, Hershey, Jennings, Kelley, Klausmeier, Kramer, and Reilly

Introduced and read first time: January 9, 2020

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 1, 2020

CHAPTER _____

1 AN ACT concerning

2 **Maryland Health Benefit Exchange – ~~Establishment of a~~ Assessment**
3 **Applicability and State-Based Health 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;~~ clarifying the applicability of a certain assessment to
9 certain entities for certain products; altering the purpose of the Maryland Health
10 Benefit Exchange Fund to include providing funding for the establishment and
11 operation of the State-Based Health Insurance Subsidies Program; providing that
12 the operation and administration of the State-Based Health Insurance Subsidies
13 Program may include certain functions delegated to certain third parties; altering
14 the contents of the Fund; altering the purposes for which the Fund may be used;
15 requiring the Board of Trustees of the Exchange to maintain a separate account
16 within the Fund for the State-Based Health Insurance Subsidies Program under
17 certain circumstances; clarifying that certain funds received from the federal
18 government under a certain waiver may be used only for the purposes of funding the
19 State Reinsurance Program; ~~requiring~~ authorizing the Exchange, in consultation
20 with the Maryland Insurance Commissioner and as approved by the Board, to
21 establish and implement a State-Based Health Insurance Subsidies Program to
22 provide subsidies to individuals for the purchase of health benefit plans in the
23 individual health insurance market; requiring the State-Based Health Insurance
24 Subsidies Program to be designed to reduce the amount that individuals pay for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 certain health benefit plans in the individual health insurance market; requiring the
 2 Exchange, in consultation with the Commissioner and as approved by the Board and
 3 based on available funds, to establish certain parameters for ~~a certain year and each~~
 4 ~~subsequent calendar year; authorizing the Exchange, in consultation with the~~
 5 ~~Commissioner and as approved by the Board, to alter the parameters under certain~~
 6 ~~circumstances~~ years; providing that, beginning on a certain date, funding for the
 7 State-Based Health Insurance Subsidies Program may be made by using certain
 8 funds; ~~requiring the Exchange to adopt regulations on or before a certain date;~~
 9 ~~requiring the Board~~ authorizing the Exchange, in consultation with the
 10 Commissioner and as approved by the Board, to ~~make a certain determination~~
 11 ~~concerning a certain waiver and~~ apply for a certain waiver ~~under certain~~
 12 ~~circumstances on or before a certain date;~~ requiring the Exchange to track certain
 13 information, post the information on a certain website, and include the information
 14 in a certain report; and generally relating to the Maryland Health Benefit Exchange
 15 and the State-Based Health Insurance Subsidies Program.

16 BY repealing and reenacting, with amendments,
 17 Article – Insurance
 18 Section 6–102.1 and 31–107
 19 Annotated Code of Maryland
 20 (2017 Replacement Volume and 2019 Supplement)

21 BY adding to
 22 Article – Insurance
 23 Section 31–122 and 31–123
 24 Annotated Code of Maryland
 25 (2017 Replacement Volume and 2019 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 27 That the Laws of Maryland read as follows:

28 **Article – Insurance**

29 6–102.1.

30 (a) This section applies to:

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

34 (i) ~~is~~ WAS subject to § 9010 of the Affordable Care Act, AS IN
 35 EFFECT ON DECEMBER 1, 2019; and

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

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

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

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

11 (2) In calendar years 2020 through 2023, both inclusive, in addition to the
12 amounts otherwise due under this subtitle, an entity subject to this section shall be subject
13 to an assessment of 1% on all amounts used to calculate the entity's premium tax liability
14 under § 6–102 of this subtitle or the amount of the entity's premium tax exemption value
15 for the immediately preceding calendar year.

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

18 (i) ~~are~~ **WERE** subject to § 9010 of the Affordable Care Act, **AS IN**
19 **EFFECT ON DECEMBER 1, 2019**; and

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

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

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

25 (ii) the partial exclusion of net premiums provided for in §
26 9010(b)(2)(B) of the Affordable Care Act.

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

30 ~~(2) THE ASSESSMENT REQUIRED UNDER THIS SECTION SHALL BE~~
31 ~~USED TO FUND THE STATE REINSURANCE PROGRAM ESTABLISHED UNDER § 31–117~~
32 ~~OF THIS ARTICLE AND THE STATE-BASED HEALTH INSURANCE SUBSIDIES~~
33 ~~PROGRAM ESTABLISHED UNDER § 31–122 OF THIS ARTICLE.~~

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

31-107.

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

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

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

(ii) provide funding for the establishment and operation of the State Reinsurance Program authorized under this title; AND

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

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

(c) The Exchange shall administer the Fund.

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

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

(e) The Fund consists of:

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

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

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

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

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

3 (6) money donated to the Fund;

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

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

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

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

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

13 ~~[(11)]~~ **(12)** any federal funds received in accordance with § 31-121 of this
14 title for the administration of small business tax credits; and

15 ~~[(12)]~~ **(13)** any other money from any other source accepted for the benefit
16 of the Fund.

17 (f) The Fund may be used only:

18 (1) for the operation and administration of the Exchange in carrying out
19 the purposes authorized under this title; ~~[and]~~

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

21 **AND**

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

24 (g) (1) The Board shall maintain separate accounts within the Fund for
25 Exchange operations ~~[and]~~, for the State Reinsurance Program, **AND, IF ESTABLISHED**
26 **BY THE EXCHANGE, FOR THE STATE-BASED HEALTH INSURANCE SUBSIDIES**
27 **PROGRAM.**

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

1 (3) Funds received from the distribution of the premium tax under §
2 6–103.2 of this article shall be placed in the account for Exchange operations and may be
3 used only for the purpose of funding the operation and administration of the Exchange.

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

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

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

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

14 (h) (1) Expenditures from the Fund for the purposes authorized by this
15 subtitle may be made only:

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

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

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

26 (3) If operating expenses of the Exchange may be charged to either State
27 or non-State fund sources, the non-State funds shall be charged before State funds are
28 charged.

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

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

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

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

3 **31-122.**

4 (A) THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER AND AS
5 APPROVED BY THE BOARD, ~~SHALL~~ MAY ESTABLISH AND IMPLEMENT A
6 STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM TO PROVIDE SUBSIDIES
7 TO INDIVIDUALS FOR THE PURCHASE OF HEALTH BENEFIT PLANS IN THE
8 INDIVIDUAL HEALTH INSURANCE MARKET.

9 (B) THE STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM
10 AUTHORIZED UNDER THIS SECTION SHALL BE DESIGNED TO REDUCE THE AMOUNT
11 THAT INDIVIDUALS PAY FOR HEALTH BENEFIT PLANS IN THE INDIVIDUAL HEALTH
12 INSURANCE MARKET.

13 (C) ~~(1)~~ BASED ON AVAILABLE FUNDS, THE EXCHANGE, IN CONSULTATION
14 WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL ESTABLISH
15 SUBSIDY ELIGIBILITY AND PAYMENT PARAMETERS FOR CALENDAR YEAR 2021 AND
16 EACH SUBSEQUENT CALENDAR YEAR EACH CALENDAR YEAR THE PROGRAM IS IN
17 EFFECT.

18 ~~(2) THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER~~
19 ~~AND AS APPROVED BY THE BOARD, MAY ALTER THE PARAMETERS ESTABLISHED IN~~
20 ~~ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION AS NECESSARY TO~~
21 ~~SECURE FEDERAL APPROVAL FOR A WAIVER SUBMITTED IN ACCORDANCE WITH §~~
22 ~~31-123 OF THIS TITLE.~~

23 (D) BEFORE IMPLEMENTING THE STATE-BASED HEALTH INSURANCE
24 SUBSIDIES PROGRAM UNDER THIS SECTION, THE EXCHANGE SHALL STUDY AND
25 REPORT TO THE BOARD ON THE FOLLOWING:

26 (1) AN ESTIMATE OF THE IMPACT OF USING FUNDING FOR
27 STATE-BASED SUBSIDIES ON FUNDING AVAILABILITY FOR REINSURANCE IN THE
28 INDIVIDUAL MARKET, USING THE ACTUAL STATE LIABILITY FOR THE STATE
29 REINSURANCE PROGRAM FOR THE 2019 BENEFIT YEAR; AND

30 (2) THE APPROPRIATE ALLOCATION OF AVAILABLE FUNDING FOR
31 REINSURANCE AND STATE-BASED SUBSIDIES THAT WILL MAXIMIZE ENROLLMENT
32 AND AFFORDABILITY IN THE INDIVIDUAL MARKET.

33 ~~(D)~~ (E) BEGINNING JANUARY 1, 2021, FUNDING FOR THE STATE-BASED
34 HEALTH INSURANCE SUBSIDIES PROGRAM MAY BE MADE BY USING ANY FUNDS
35 DESIGNATED BY THE STATE TO PROVIDE SUBSIDIES TO INDIVIDUALS WHO MEET

1 THE SUBSIDY ELIGIBILITY AND PAYMENT PARAMETERS ESTABLISHED UNDER
2 SUBSECTION (C) OF THIS SECTION.

3 ~~(E) ON OR BEFORE JANUARY 1, 2021, THE EXCHANGE SHALL ADOPT~~
4 ~~REGULATIONS IMPLEMENTING THE PROVISIONS OF THIS SECTION.~~

5 (F) (1) IF THE EXCHANGE ESTABLISHES THE STATE-BASED HEALTH
6 INSURANCE SUBSIDIES PROGRAM UNDER THIS SECTION, THE EXCHANGE SHALL
7 TRACK ON A MONTHLY BASIS EXPENDITURES ON SUBSIDIES PROVIDED UNDER THE
8 PROGRAM, INCLUDING:

9 (I) THE AVERAGE NUMBER OF INDIVIDUALS RECEIVING
10 SUBSIDIES UNDER THE PROGRAM; AND

11 (II) THE AVERAGE SUBSIDY AMOUNT RECEIVED BY
12 INDIVIDUALS UNDER THE PROGRAM.

13 (2) THE INFORMATION TRACKED BY THE EXCHANGE UNDER
14 PARAGRAPH (1) OF THIS SUBSECTION SHALL:

15 (I) BE POSTED ON THE WEBSITE OF THE EXCHANGE; AND

16 (II) BE INCLUDED IN THE ANNUAL REPORT REQUIRED UNDER §
17 31-119(D) OF THIS SUBTITLE.

18 31-123.

19 ~~ON OR BEFORE SEPTEMBER 1, 2020, THE EXCHANGE, IN CONSULTATION WITH~~
20 ~~THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL:~~

21 ~~(1) DETERMINE WHETHER THE ESTABLISHMENT OF THE~~
22 ~~STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM REQUIRES THE STATE~~
23 ~~TO APPLY TO AND RECEIVE APPROVAL FROM THE U.S. SECRETARY OF HEALTH AND~~
24 ~~HUMAN SERVICES FOR A STATE INNOVATION WAIVER UNDER § 1332 OF THE~~
25 ~~AFFORDABLE CARE ACT; AND~~

26 ~~(2) IF THE EXCHANGE DETERMINES THAT A STATE INNOVATION~~
27 ~~WAIVER IS REQUIRED TO ESTABLISH THE STATE-BASED HEALTH INSURANCE~~
28 ~~SUBSIDIES PROGRAM, APPLY FOR THE STATE INNOVATION WAIVER.~~

29 THE EXCHANGE MAY, IN CONSULTATION WITH THE COMMISSIONER AND AS
30 APPROVED BY THE BOARD, APPLY FOR A STATE INNOVATION WAIVER UNDER § 1332
31 OF THE AFFORDABLE CARE ACT TO IMPLEMENT THE STATE-BASED HEALTH
32 INSURANCE SUBSIDIES PROGRAM.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.