HB 785

Department of Legislative Services

Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 785 (Delegate Eckardt, *et al.*)
Health and Government Operations

Maryland Health Insurance Reform Act - Modifications - Health Reimbursement Account Plan - Reinsurance Pool

This bill repeals the Maryland Small Employer Health Reinsurance Pool and establishes the Maryland Small Group Reinsurance Pool. The pool is a self-governing, Maryland nonprofit corporation that collects premiums from participating insurance carriers for the purpose of providing reinsurance in the small employer group market.

Fiscal Summary

State Effect: Maryland Insurance Administration (MIA) special fund expenditures could increase by $52,100 in FY 2004. Future year expenditures reflect annualization and inflation. Potential increase in premium tax revenues.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenue	-	-	-	-	-
SF Expenditure	52,100	64,400	68,200	72,200	76,600
Net Effect	($52,100)	($64,400)	($68,200)	($72,200)	($76,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires the Maryland Health Care Commission (MHCC) to adopt regulations that specify a health reimbursement account plan that conforms to the

requirements for such plans set forth in Internal Revenue Ruling 2002-41 and is sold by a carrier to a small employer.

Each carrier who writes policies in the small group health market must belong to the pool as a condition of the carrier's authority to transact business in the State. A self-funded employer small group plan subject to the federal Employee Retirement Income and Security Act of 1974 (ERISA) may participate in the pool, and is entitled to the pool's benefits and subject to the pool's obligations.

The bill provides for the election of board members, voting rights, maximum share holding, and term limitations.

A plan of operation for the pool cannot take effect until approved by the Insurance Commissioner. If the Commissioner disapproves all or part of the plan of operation, the Commissioner must state the reason for so doing and must work with the pool to modify or amend the plan of operation. The pool must file an annual report with the Insurance Commissioner summarizing the pool's activities, including premiums from risks ceded to the pool, administrative expenses, the paid and incurred losses for the year, and any other information that may be requested by the Commissioner.

Each carrier member of the pool may determine on a case-by-case basis and on its own initiative whether or not to cede a risk to the pool. Each carrier that cedes a risk to the pool must pay the pool a premium determined by the pool. A carrier that cedes a risk to the pool must retain a portion of the risk as determined by the pool. The retained risk cannot be less than 10%.

Current Law: A Small Employer Health Reinsurance Pool is currently authorized by law; however, it is not functioning.

Two products may be offered in the small group market, the Comprehensive Standard Health Benefit Plan (CSHBP) and a modified health benefit plan for medical savings accounts (MSAs) that qualify under the federal Health Insurance Portability and Accountability Act of 1996. CSHBP is subject to a community rate premium that is based on all risks covered in a health benefit plan without regard to health status or occupation or any other factor not specifically authorized by law. The premium rate may only be adjusted for age and geographic location. Based on these adjustments, a carrier may charge a rate that is 40% above or below the community rate.

Internal Revenue Ruling 2002-41 states that employer-provided coverage and medical care expense reimbursements made under a health reimbursement arrangement that allows unused amounts to be carried forward are excludable from gross income.

Background:

Reinsurance Pool: Several states are using an administered reinsurance pool that allows individual insurers to reinsure any risks that are expected to generate costs exceeding the premiums they may charge. The principal funding for the reinsurance pool is from the reinsurance premium paid by the ceding insurer. Insurers may prospectively reinsure either whole groups or high-risk individuals within groups. Since insurers will reinsure only those groups and individuals they predict will have higher expenses than these prices, the reinsurance pool is expected to suffer losses, which are spread back to the insurance market through assessments against participating insurers based on the small group market share.

Health Reimbursement Arrangements: Health Reimbursement Arrangements (HRAs), authorized by the federal Internal Revenue Service (IRS) in June 2002, permit an employee to use a predetermined amount of an employer's money solely for medical expenses. The funds are owned by the employer, not the employee, and they may not be withdrawn for nonmedical expenditures. Unspent HRA balances may accumulate from year to year, and employers may or may not allow departing employees access to the balances after they have left the company. HRAs are not MSAs or flexible spending accounts (FSAs).

MSAs, authorized by federal law in 1996, are health plans that combine a high-deductible health insurance policy with a savings account. The policy protects the employee from the cost of a catastrophic illness and the savings account, controlled by the employee, is used to pay for routine health care. Only self-employed and small business employees can have a tax-free MSA. MSA funds not spent by year's end may be rolled over to the next year.

FSAs were authorized by federal law in 1978 and allow employees to contribute some of their own salary to an account to pay for health care expenses or their share of health insurance premiums. Contributions to an FSA are exempt from both income and payroll taxes. While employees contribute the money, employers may keep any unspent balance at year's end.

State Fiscal Effect: MIA special fund expenditures could increase by $52,127 in fiscal 2004, which reflects the bill's October 1, 2003 effective date. This estimate reflects the cost of hiring one MIA administrator to review, approve, or disapprove amendments to

the pool's plan of operation; make the pool's annual report available to the Governor, the General Assembly, and the public; hear and decide appeals by pool members of adverse decisions regarding assessments; and grant approval before the pool's board enters into contractual agreements with other states. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	$46,795
Other Operating Expenses	5,333
Total FY 2004 State Expenditures	**$52,127**

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The adoption of regulations for HRAs could be handled with existing Maryland Health Care Commission resources. Premium tax revenues could increase if premiums in the small group market increase.

Small Business Effect: If younger, healthier small employer groups provide HSAs to their employees and choose CSHBP insurance coverage with very high deductibles, risk sharing in the small group market could be eroded since minimal users of health care services are not subsidizing high users of health care. Accordingly, premiums for CSHBP could increase, although any increase would be limited by community rate bands and the affordability cap.

Additional Information

Prior Introductions: None.

Cross File: SB 609 (Senator Harris) – Finance.

Information Source(s): *An Evaluation of Florida's Small Group Health Insurance Reform Laws,* Wake Forest University School of Medicine, 1998; National Association of Insurance Commissioners; Kaiser Family Foundation; Department of Health and Mental Hygiene (Maryland Health Care Commission); Maryland Insurance Administration; Department of Legislative Services

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