
By: **Delegates O'Donnell and Edwards**

Introduced and read first time: February 10, 2005

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance - Premium Tax on Health Maintenance Organizations and**
3 **Managed Care Organizations - Repeal**

4 FOR the purpose of repealing a certain tax on premiums applicable to certain health
5 maintenance organizations and managed care organizations; repealing a certain
6 requirement relating to the reporting of gross receipts by a managed care
7 organization; altering a certain source of revenue to the Maryland Medical
8 Professional Liability Insurance Rate Stabilization Fund; altering certain
9 distributions in certain fiscal years from the Fund to the Medical Assistance
10 Program Account and the Rate Stabilization Account within the Fund; limiting
11 to certain years certain distributions to the Medical Assistance Program Account
12 and Rate Stabilization Account; limiting to certain years the authorization for
13 the Maryland Insurance Commissioner to enter into certain agreements with
14 medical professional liability insurers to provide certain disbursements from the
15 Fund for a certain purpose; repealing a certain limitation on the base premium
16 for certain agreements between the Commissioner and medical professional
17 liability insurers; and generally relating to the repeal of a certain tax on
18 premiums applicable to certain health maintenance organizations and managed
19 care organizations.

20 BY repealing

21 Article - Health - General

22 Section 15-102.7

23 Annotated Code of Maryland

24 (2000 Replacement Volume and 2004 Supplement)

25 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special

26 Session)

27 BY repealing and reenacting, with amendments,

28 Article - Health - General

29 Section 19-727

30 Annotated Code of Maryland

31 (2000 Replacement Volume and 2004 Supplement)

32 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special

1 Session)

2 BY repealing and reenacting, with amendments,
3 Article - Insurance
4 Section 6-101, 6-102(b), 6-103, 6-104(a), and 6-107(a)
5 Annotated Code of Maryland
6 (2003 Replacement Volume and 2004 Supplement)
7 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special
8 Session)

9 BY repealing and reenacting, with amendments,
10 Article - Insurance
11 Section 19-104.1
12 Annotated Code of Maryland
13 (2002 Replacement Volume and 2004 Supplement)
14 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special
15 Session)

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

18 **Article - Health - General**

19 [15-102.7.

20 The premium tax imposed under § 6-102 of the Insurance Article applies to
21 managed care organizations.]

22 19-727.

23 (A) [A] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A health
24 maintenance organization is not exempted from any State, county, or local taxes
25 solely because of this subtitle.

26 (B) (1) EACH HEALTH MAINTENANCE ORGANIZATION THAT IS AUTHORIZED
27 TO OPERATE UNDER THIS SUBTITLE IS EXEMPTED FROM PAYING THE PREMIUM TAX
28 IMPOSED UNDER TITLE 6, SUBTITLE 1 OF THE INSURANCE ARTICLE.

29 (2) PREMIUMS RECEIVED BY AN INSURER UNDER POLICIES THAT
30 PROVIDE HEALTH MAINTENANCE ORGANIZATION BENEFITS ARE NOT SUBJECT TO
31 THE PREMIUM TAX IMPOSED UNDER TITLE 6, SUBTITLE 1 OF THE INSURANCE
32 ARTICLE TO THE EXTENT:

33 (I) OF THE AMOUNTS ACTUALLY PAID BY THE INSURER TO A
34 NONPROFIT HEALTH MAINTENANCE ORGANIZATION THAT OPERATES ONLY AS A
35 HEALTH MAINTENANCE ORGANIZATION; OR

1 (II) THE PREMIUMS HAVE BEEN PAID BY THAT NONPROFIT
2 HEALTH MAINTENANCE ORGANIZATION.

3 **Article - Insurance**

4 6-101.

5 (a) The following persons are subject to taxation under this subtitle:

6 (1) a person engaged as principal in the business of writing insurance
7 contracts, surety contracts, guaranty contracts, or annuity contracts;

8 (2) [a managed care organization authorized by Title 15, Subtitle 1 of
9 the Health - General Article;

10 (3) A health maintenance organization authorized by Title 19, Subtitle 7
11 of the Health - General Article;

12 (4)] an attorney in fact for a reciprocal insurer;

13 [(5)] (3) the Maryland Automobile Insurance Fund; and

14 [(6)] (4) a credit indemnity company.

15 (b) The following persons are not subject to taxation under this subtitle:

16 (1) a nonprofit health service plan corporation that meets the
17 requirements established under §§ 14-106 and 14-107 of this article;

18 (2) a fraternal benefit society;

19 (3) A HEALTH MAINTENANCE ORGANIZATION AUTHORIZED BY TITLE 19,
20 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE;

21 [(3)] (4) a surplus lines broker, who is subject to taxation in accordance
22 with Title 3, Subtitle 3 of this article;

23 [(4)] (5) an unauthorized insurer, who is subject to taxation in
24 accordance with Title 4, Subtitle 2 of this article;

25 [(5)] (6) the Maryland Health Insurance Plan established under Title
26 14, Subtitle 5, Part I of this article; or

27 [(6)] (7) the Senior Prescription Drug Program established under Title
28 14, Subtitle 5, Part II of this article.

29 6-102.

30 (b) Premiums to be taxed include:

1 (1) the consideration for a surety contract, guaranty contract, or annuity
2 contract;

3 (2) [gross receipts received as a result of capitation payments,
4 supplemental payments, and bonus payments, made to a managed care organization
5 for provider services to an individual who is enrolled in a managed care organization;

6 (3) subscription charges or other amounts paid to a health maintenance
7 organization on a predetermined periodic rate basis by a person other than a person
8 subject to the tax under this subtitle as compensation for providing health care
9 services to members;

10 (4)] dividends on life insurance policies that have been applied to buy
11 additional insurance or to shorten the period during which a premium is payable; and

12 [(5)] (3) the part of the gross receipts of a title insurer that is derived
13 from insurance business or guaranty business.

14 6-103.

15 The tax rate is:

16 (1) 0% for premiums for annuities; and

17 (2) 2% for all other premiums[, including:

18 (i) gross receipts received as a result of capitation payments made
19 to a managed care organization, supplemental payments, and bonus payments; and

20 (ii) subscription charges or other amounts paid to a health
21 maintenance organization].

22 6-104.

23 (a) Subject to subsection (b) of this section, in computing the tax under this
24 section, the following deductions from gross direct premiums allocable to the State
25 are allowed:

26 (1) returned premiums, not including surrender values;

27 (2) dividends that are:

28 (i) paid or credited to policyholders; or

29 (ii) applied to buy additional insurance or to shorten the period
30 during which premiums are payable; [and]

31 (3) returns or refunds made or credited to policyholders because of
32 retrospective ratings or safe driver rewards; AND

1 (4) PREMIUMS RECEIVED BY A PERSON SUBJECT TO TAXATION UNDER
2 THIS SUBTITLE UNDER POLICIES PROVIDING HEALTH MAINTENANCE
3 ORGANIZATION BENEFITS TO THE EXTENT:

4 (I) OF THE AMOUNTS ACTUALLY PAID BY THE PERSON TO A
5 NONPROFIT HEALTH MAINTENANCE ORGANIZATION AUTHORIZED BY TITLE 19,
6 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE THAT OPERATES ONLY AS A
7 HEALTH MAINTENANCE ORGANIZATION THAT IS EXEMPT FROM TAXES UNDER §
8 19-727(B) OF THE HEALTH - GENERAL ARTICLE; OR

9 (II) THAT THE PREMIUMS HAVE BEEN PAID BY A HEALTH
10 MAINTENANCE ORGANIZATION THAT IS EXEMPT FROM TAXES UNDER § 19-727(B) OF
11 THE HEALTH - GENERAL ARTICLE.

12 6-107.

13 (a) On or before March 15 of each year, each person subject to taxation under
14 this subtitle shall:

15 (1) file with the Commissioner:

16 (i) a report of the new and renewal gross direct premiums less
17 returned premiums written by the person during the preceding calendar year; AND

18 (ii) [a report of the gross receipts received as a result of capitation
19 payments, supplemental payments, and bonus payments made to a managed care
20 organization during the preceding calendar year; and

21 (iii)] if the person issues perpetual policies of fire insurance, a report
22 of the average amount of deposits held by the person during the preceding calendar
23 year in connection with perpetual policies of fire insurance issued on property in the
24 State and in force during any part of that year; and

25 (2) pay to the Commissioner the total amount of taxes imposed by this
26 subtitle, as shown on the face of the report, after crediting the amount of taxes paid
27 with the declaration of estimated tax and each quarterly report filed under § 6-106 of
28 this subtitle.

29 19-104.1.

30 (a) (1) In this section the following words have the meanings indicated.

31 (2) "Agreement" means a contract between the Maryland Insurance
32 Administration and a medical professional liability insurer under subsection (j) of this
33 section.

34 (3) "Fund" means the Maryland Medical Professional Liability Insurance
35 Rate Stabilization Fund.

1 (4) (i) "Health care provider" means a health care practitioner
2 licensed under Title 14 of the Health Occupations Article.

3 (ii) "Health care provider" does not include:

- 4 1. a respiratory care practitioner;
- 5 2. a radiation oncology/therapy technologist;
- 6 3. a medical radiation technologist; or
- 7 4. a nuclear medicine technologist.

8 (5) "Medical Assistance Program Account" means an account established
9 within the Fund that is available to the Maryland Medical Assistance Program under
10 the terms provided under subsection (q) of this section.

11 (6) "Medical injury" has the meaning stated in § 3-2A-01 of the Courts
12 Article.

13 (7) "Medical professional liability insurer" means an insurer that:

14 (i) on or before January 1, 2005, holds a certificate of authority
15 issued by the Commissioner under § 4-109 or § 4-112 of this article; and

16 (ii) issues or delivers a policy in the State that insures a health care
17 provider against damages due to a medical injury.

18 (8) "Rate Stabilization Account" means an account established within
19 the Fund that is available to subsidize agreements under subsection (j) of this section.

20 (b) There is a Maryland Medical Professional Liability Insurance Rate
21 Stabilization Fund.

22 (c) The purposes of the Fund are to:

23 (1) retain health care providers in the State by allowing medical
24 professional liability insurers to charge medical professional liability insurance rates
25 that are less than the rates approved under § 11-201 of this article;

26 (2) increase the fee-for-service rates paid by the Maryland Medical
27 Assistance Program to physicians identified under subsection (q) of this section;

28 (3) increase capitation payments made to managed care organizations
29 that participate in the Maryland Medical Assistance Program to pay network
30 physicians identified under subsection (q) of this section at least 100% of the fee
31 schedule used in fee-for-service rates paid by the Maryland Medical Assistance
32 Program; and

33 (4) subsidize the costs incurred by the Commissioner to administer the
34 Fund.

1 (d) The Commissioner shall administer the Fund.

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

4 (f) The State Treasurer shall hold the Fund separately and the Comptroller
5 shall account for the Fund.

6 (g) The State Treasurer shall invest the money of the Fund in the same
7 manner as other State money may be invested.

8 (h) The debts and obligations of the Fund are not debts and obligations of the
9 State or a pledge of the full faith and credit of the State.

10 (i) [Notwithstanding § 2-114 of this article:

11 (1) the Commissioner shall deposit the revenue from the tax imposed on
12 health maintenance organizations and managed care organizations under § 6-102 of
13 this article in the Fund;

14 (2)] (1) [subject to items (3) and (4) of this subsection, the] THE Fund
15 shall consist of:

16 (i) [the revenue from the tax imposed on managed care
17 organizations and health maintenance organizations under § 6-102 of this article]
18 MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;

19 (ii) interest or other income earned on the moneys in the Fund; and

20 (iii) any other money from any other source accepted for the benefit
21 of the Fund[;].

22 [(3)] (2) [the] THE Commissioner shall distribute from the Fund an
23 amount, not to exceed 0.5% of the total revenue collected in each year, sufficient to
24 cover the costs of administering the Fund[; and].

25 [(4)] (3) [after] AFTER distributing the amounts required under [item
26 (3)] PARAGRAPH (2) of this subsection, the revenue remaining in the Fund shall be
27 allocated according to the following schedule:

28 (i) [in fiscal year 2005, \$6,000,000 to the Medical Assistance
29 Program Account;

30 (ii)] in fiscal year 2006:

31 1. [\$40,700,000] \$30,000,000 to the Rate Stabilization
32 Account to subsidize agreements for calendar year 2005; and

33 2. [\$39,300,000] \$18,500,000 to the Medical Assistance
34 Program Account;

1 [(iii)] (II) in fiscal year 2007:

2 1. [\$33,400,000] \$30,000,000 to the Rate Stabilization
3 Account to subsidize agreements for calendar year 2006; and

4 2. [\$46,600,000] \$18,500,000 to the Medical Assistance
5 Program Account; AND

6 [(iv)] (III) in fiscal year 2008[:],

7 [1. \$26,100,000] \$30,000,000 to the Rate Stabilization Account
8 to subsidize agreements for calendar year 2007[:]; and

9 2. the remaining balance to the Medical Assistance Program
10 Account;

11 (v) in fiscal year 2009:

12 1. \$18,800,000 to the Rate Stabilization Account to subsidize
13 agreements for calendar year 2008; and

14 2. the remaining balance to the Medical Assistance Program
15 Account; and

16 (vi) in fiscal year 2010 and annually thereafter, 100% to the Medical
17 Assistance Program Account].

18 (j) [(1)] The Commissioner may enter into four 1-year agreements with a
19 medical professional liability insurer to:

20 [(i)] (1) [subject to paragraph (2) of this subsection,] for an
21 agreement applicable to a 12-month period initiated on or after January 1, 2005,
22 maintain medical professional liability insurance policies issued or delivered in the
23 State at rates allowed under an approved rate filing for that period, less the value of
24 the guarantee provided under subsection (m) of this section;

25 [(ii)] (2) for an agreement applicable to a 12-month period
26 initiated on or after January 1, 2006, maintain medical professional liability
27 insurance policies issued or delivered in the State at rates allowed under an approved
28 rate filing for that period, less the value of the guarantee provided under subsection
29 (m) of this section; AND

30 [(iii)] (3) for an agreement applicable to a 12-month period
31 initiated on or after January 1, 2007, maintain medical professional liability
32 insurance policies issued or delivered in the State at rates allowed under an approved
33 rate filing for that period, less the value of the guarantee provided under subsection
34 (m) of this section[:]; and

35 (iv) for an agreement applicable to a 12-month period initiated on
36 or after January 1, 2008, maintain medical professional liability insurance policies

1 issued or delivered in the State at rates allowed under an approved rate filing for that
2 period, less the value of the guarantee provided under subsection (m) of this section.

3 (2) For an agreement under paragraph (1)(i) of this subsection, the base
4 premium allowed under an approved rate filing, less the value of the guarantee
5 provided under subsection (m) of this section for each specialty, may not exceed the
6 base premium for the previous 12-month period by more than 5%].

7 (k) (1) A medical professional liability insurer entering into an agreement
8 with the Commissioner shall establish a separate account:

9 (i) that is credited with:

10 1. earned premiums on medical professional liability
11 insurance policies issued or delivered in the State during the period in which an
12 agreement is in effect;

13 2. investment income earned on the average monthly
14 balance of the account at a stated monthly rate of interest equivalent to the 2-year
15 United States Treasury rate of interest, as published by the Federal Reserve Board, in
16 effect on the effective date of the agreement plus 50 basis points;

17 3. for a medical professional liability insurer that is a mutual
18 insurer, the value of a dividend, if any, that may be issued during the period in which
19 an agreement is in effect; and

20 4. the lesser of 10% of the surplus of a medical professional
21 liability insurer with a risk-based capital ratio at or above 600%, or the excess of the
22 risk-based capital ratio over 600% on the date that an agreement is executed; and

23 (ii) that is debited with:

24 1. indemnity payments;

25 2. allocated loss adjustment expense payments;

26 3. underwriting expense incurred;

27 4. unallocated loss adjustment expense incurred;

28 5. provision for death, disability, and retirement;

29 6. reinsurance cost incurred;

30 7. general operating expenses; and

31 8. underwriting profits as allowed under the last approved
32 rate filing prior to January 1, 2005.

1 (2) A medical professional liability insurer shall hold and invest the
2 funds identified with the account established under paragraph (1) of this subsection
3 in the same manner as other company funds.

4 (1) The Rate Stabilization Account may not incur an obligation under an
5 agreement until the amount debited to an account established under subsection (k) of
6 this section exceeds the amount credited to the Account.

7 (m) (1) Except as otherwise provided in this section, for each year an
8 agreement is in effect, a medical professional liability insurer that enters into an
9 agreement under subsection (j) of this section is eligible to receive disbursements
10 from the Fund proportionate to that insurer's share of total premiums earned by
11 authorized insurers in calendar 2004.

12 (2) In the event an insurer that did not earn premiums in calendar 2004
13 enters an agreement, that insurer shall be allocated 5% of the balance in the Fund or
14 such lesser amount as the Commissioner shall determine and the funds available to
15 other insurers shall be reduced pro rata.

16 (3) The calculations required under this section shall be completed
17 before any agreement for any year may be formally executed.

18 (n) To receive payment from the Rate Stabilization Account, a medical
19 professional liability insurer shall apply to the Commissioner on a form and in a
20 manner approved by the Commissioner.

21 (o) For statutory accounting purposes, the Commissioner shall allow a credit
22 for reinsurance recoverable, either as an asset or a deduction from liability, for
23 disbursements made from the Rate Stabilization Account to a medical professional
24 liability insurer.

25 (p) (1) Disbursement from the Fund may not exceed the revenue from the
26 premium tax imposed under § 6-102 of this article on managed care organizations
27 and health maintenance organizations, including interest earned.

28 (2) A disbursement may not be made from the Fund to the Medical
29 Mutual Liability Insurance Society of Maryland during any period for which the
30 Commissioner has determined, under § 24-212 of this article, that the surplus of the
31 Society is excessive.

32 (q) (1) Disbursements from the Medical Assistance Program Account of
33 \$15,000,000 shall be made to the Maryland Medical Assistance Program to increase
34 both fee-for-service physician rates and capitation payments to managed care
35 organizations for procedures commonly performed by:

36 (i) obstetricians;

37 (ii) neurosurgeons;

38 (iii) orthopedic surgeons; and

1 (iv) emergency medicine physicians.

2 (2) (i) Portions of the Medical Assistance Program Account that exceed
3 the amount provided for under paragraph (1) of this subsection shall be used only to
4 increase payments to physicians and capitation payments to managed care
5 organizations.

6 (ii) 1. Disbursements from the Medical Assistance Program
7 Account shall be made to increase fee-for-service health care provider rates and rates
8 paid to managed care organizations for services identified by the Department in
9 consultation with managed care organizations, Maryland Hospital Association, Med
10 Chi, American Academy of Pediatrics, Maryland Chapter, and the American College of
11 Emergency Room Physicians, Maryland Chapter.

12 2. The Department shall submit its plan for Medicaid
13 reimbursement rate increases to the Senate Budget and Taxation, Senate Finance,
14 House Appropriations, and House Health and Government Operations committees
15 prior to adopting regulations implementing the increase.

16 (r) All receipts and disbursements of the Fund shall be audited yearly by the
17 Office of Legislative Audits and a report of the audit shall be included in and become
18 part of the annual report required under subsection (t) of this section.

19 (s) The Commissioner shall adopt regulations that specify the information
20 that a medical professional liability insurer shall submit to receive a disbursement
21 from the Rate Stabilization Account.

22 (t) On or before March 1 of each year, the Commissioner shall report to the
23 Legislative Policy Committee, in accordance with § 2-1246 of the State Government
24 Article, on:

25 (1) the amount of money in the Fund, the Rate Stabilization Account,
26 and the Medical Assistance Program Account on the last day of the previous calendar
27 year;

28 (2) the amount of money applied for by medical professional liability
29 insurers during the previous calendar year;

30 (3) the amount of money disbursed to medical professional liability
31 insurers during the previous calendar year;

32 (4) the costs incurred in administering the Fund during the previous
33 fiscal year; and

34 (5) the report of audited receipts and disbursements of the Fund as
35 required under subsection (r) of this section.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 July 1, 2005.