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By: **Senators Stoltzfus and Harris**

Introduced and read first time: February 4, 2005

Assigned to: Budget and Taxation

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance - Tax on Premiums of Health Maintenance Organizations**  
 3 **and 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 authority of the Insurance Commission to enter into certain agreements with  
 10 medical professional liability insurers to maintain certain insurance policies at  
 11 certain rates; altering certain distributions in certain fiscal years from the Fund  
 12 to the Medical Assistance Program Account and the Rate Stabilization Account  
 13 within the Fund; and generally relating to the repeal of a certain tax on  
 14 premiums applicable to certain health maintenance organizations and managed  
 15 care organizations.

16 BY repealing

17 Article - Health - General

18 Section 15-102.7

19 Annotated Code of Maryland

20 (2000 Replacement Volume and 2004 Supplement)

21 (As enacted by Ch. 5 of the Acts of the General Assembly of the 2004 Special

22 Session)

23 BY repealing and reenacting, with amendments,

24 Article - Health - General

25 Section 19-727

26 Annotated Code of Maryland

27 (2000 Replacement Volume and 2004 Supplement)

28 (As enacted by Ch. 5 of the Acts of the General Assembly of the 2004 Special

29 Session)

30 BY repealing and reenacting, with amendments,

31 Article - Insurance

1 Section 6-101, 6-102(b), 6-103, 6-104(a), and 6-107(a)  
2 Annotated Code of Maryland  
3 (2003 Replacement Volume and 2004 Supplement)  
4 (As enacted by Ch. 5 of the Acts of the General Assembly of the 2004 Special  
5 Session)

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

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

15 **Article - Health - General**

16 [15-102.7.

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

19 19-727.

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

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

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

30 (I) OF THE AMOUNTS ACTUALLY PAID BY THE INSURER TO A  
31 NONPROFIT HEALTH MAINTENANCE ORGANIZATION THAT OPERATES ONLY AS A  
32 HEALTH MAINTENANCE ORGANIZATION; OR

33 (II) THE PREMIUMS HAVE BEEN PAID BY THAT NONPROFIT  
34 HEALTH MAINTENANCE ORGANIZATION.

1

**Article - Insurance**

2 6-101.

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

4 (1) a person engaged as principal in the business of writing insurance  
5 contracts, surety contracts, guaranty contracts, or annuity contracts;6 (2) [a managed care organization authorized by Title 15, Subtitle 1 of  
7 the Health - General Article;8 (3) A health maintenance organization authorized by Title 19, Subtitle 7  
9 of the Health - General Article;

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

11 [(5)] (3) the Maryland Automobile Insurance Fund; and

12 [(6)] (4) a credit indemnity company.

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

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

16 (2) a fraternal benefit society;

17 (3) A HEALTH MAINTENANCE ORGANIZATION AUTHORIZED BY TITLE 19,  
18 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE;19 [(3)] (4) a surplus lines broker, who is subject to taxation in accordance  
20 with Title 3, Subtitle 3 of this article;21 [(4)] (5) an unauthorized insurer, who is subject to taxation in  
22 accordance with Title 4, Subtitle 2 of this article;23 [(5)] (6) the Maryland Health Insurance Plan established under Title  
24 14, Subtitle 5, Part I of this article; or25 [(6)] (7) the Senior Prescription Drug Program established under Title  
26 14, Subtitle 5, Part II of this article.

27 6-102.

28 (b) Premiums to be taxed include:

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

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

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

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

10 [(5)] (3) the part of the gross receipts of a title insurer that is derived  
11 from insurance business or guaranty business.

12 6-103.

13 The tax rate is:

14 (1) 0% for premiums for annuities; and

15 (2) 2% for all other premiums[, including:

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

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

20 6-104.

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

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

25 (2) dividends that are:

26 (i) paid or credited to policyholders; or

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

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

31 (4) PREMIUMS RECEIVED BY A PERSON SUBJECT TO TAXATION UNDER  
32 THIS SUBTITLE UNDER POLICIES PROVIDING HEALTH MAINTENANCE  
33 ORGANIZATION BENEFITS TO THE EXTENT:

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

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

9 6-107.

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

12 (1) file with the Commissioner:

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

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

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

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

26 19-104.1.

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

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

31 (3) "Fund" means the Maryland Medical Professional Liability Insurance  
32 Rate Stabilization Fund.

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

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

36 1. a respiratory care practitioner;

- 1                            2.        a radiation oncology/therapy technologist;
- 2                            3.        a medical radiation technologist; or
- 3                            4.        a nuclear medicine technologist.

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

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

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

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

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

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

16        (b)        There is a Maryland Medical Professional Liability Insurance Rate  
17 Stabilization Fund.

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

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

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

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

29                    (4)        subsidize the costs incurred by the Commissioner to administer the  
30 Fund.

31        (d)        The Commissioner shall administer the Fund.

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

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

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

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

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

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

11 [(2)] (1) [subject to items (3) and (4) of this subsection, the] THE Fund  
12 shall consist of:

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

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

17 (iii) any other money from any other source accepted for the benefit  
18 of the Fund;

19 [(3)] (2) [the] THE Commissioner shall distribute from the Fund an  
20 amount, not to exceed 0.5% of the total revenue collected in each year, sufficient to  
21 cover the costs of administering the Fund[; and].

22 [(4)] (3) [after] AFTER distributing the amounts required under item  
23 [(3)] (2) of this subsection, the revenue remaining in the Fund shall be allocated  
24 according to the following schedule:

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

27 (ii)] in fiscal year 2006:

28 1. [\$40,700,000] \$30,000,000 to the Rate Stabilization  
29 Account to subsidize agreements for calendar year 2005; and

30 2. [\$39,300,000] \$18,500,000 to the Medical Assistance  
31 Program Account;

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

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

1 2. [\$46,600,000] \$18,500,000 to the Medical Assistance  
2 Program Account;

3 [(iv)] (III) in fiscal year 2008:

4 1. [\$26,100,000] \$30,000,000 to the Rate Stabilization  
5 Account to subsidize agreements for calendar year 2007; and

6 2. [the remaining balance] \$18,500,000 to the Medical  
7 Assistance Program Account; AND

8 [(v)] (IV) in fiscal year 2009[:

9 1. \$18,800,000 to the Rate Stabilization Account to subsidize  
10 agreements for calendar year 2008; and

11 2. the remaining balance to the Medical Assistance Program  
12 Account; and

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

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

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

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

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

32 (iv) for an agreement applicable to a 12-month period initiated on  
33 or after January 1, 2008, maintain medical professional liability insurance policies  
34 issued or delivered in the State at rates allowed under an approved rate filing for that  
35 period, less the value of the guarantee provided under subsection (m) of this section.

36 (2) For an agreement under paragraph (1)(i) of this subsection, the base  
37 premium allowed under an approved rate filing, less the value of the guarantee



1 provided under subsection (m) of this section for each specialty, may not exceed the  
2 base premium for the previous 12-month period by more than 5%].

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

5 (i) that is credited with:

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

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

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

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

19 (ii) that is debited with:

20 1. indemnity payments;

21 2. allocated loss adjustment expense payments;

22 3. underwriting expense incurred;

23 4. unallocated loss adjustment expense incurred;

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

25 6. reinsurance cost incurred;

26 7. general operating expenses; and

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

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

32 (l) The Rate Stabilization Account may not incur an obligation under an  
33 agreement until the amount debited to an account established under subsection (k) of  
34 this section exceeds the amount credited to the Account.

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

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

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

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

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

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

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

26 (q) (1) Disbursements from the Medical Assistance Program Account of  
27 \$15,000,000 shall be made to the Maryland Medical Assistance Program to increase  
28 both fee-for-service physician rates and capitation payments to managed care  
29 organizations for procedures commonly performed by:

30 (i) obstetricians;

31 (ii) neurosurgeons;

32 (iii) orthopedic surgeons; and

33 (iv) emergency medicine physicians.

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

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

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

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

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

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

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

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

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

27 (4) the costs incurred in administering the Fund during the previous  
28 fiscal year; and

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

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