SB 836

Department of Legislative Services

Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 836 (Senator Frosh, *et al.*)
Finance Economic Matters and Health and Government Operations

Maryland Patients' Access to Quality Health Care Act of 2004 - Implementation and Corrective Provisions

This emergency bill makes substantive and technical changes to Chapter 5 of the 2004 Special Session, the Maryland Patients' Access to Quality Health Care Act of 2004, and makes other changes consistent with Chapter 5.

If the bill passes without sufficient votes to pass an emergency measure, it takes effect March 31, 2005.

Fiscal Summary

State Effect: Special fund revenues would decrease by $7,079,100 in FY 2005 due to the delayed implementation of the premium tax on managed care organizations (MCOs). Expenditures would not be affected.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
SF Revenue	($7,079,100)	$0	$0	$0	$0
Expenditure	$0	$0	$0	$0	$0
Net Effect	($7,079,100)	$0	$0	$0	$0

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

Local Effect: None.

Small Business Effect: Minimal

Analysis

Bill Summary and Current Law:

Capitation Payments to MCOs

The Bill: In adjusting capitation payments, the Secretary of Health and Mental Hygiene must consider, to the extent allowed under federal law, the expenses incurred by MCOs that are applicable to the business of providing care to enrolled individuals.

Current Law: The Department of Health and Mental Hygiene must make capitation payments to MCOs. In consultation with the Maryland Insurance Commissioner, the Secretary must: (1) set capitation payments at a level actuarially adjusted to the provided benefits; and (2) actuarially adjust the capitation payments to reflect the relative risk assumed by the MCO.

Quarterly Reporting Requirements

The Bill: The quarterly report that a medical professional liability insurer is currently required to file must contain specified information about claims similar to, but more detailed than, the current requirements and repeals current content requirements for those reports.

Current Law: Insurers must file quarterly reports of any claim or action for damages if the claim or action: (1) is based on an error, omission, or negligence of performing professional services or based on the lack of consent; and (2) resulted in a final judgment, a settlement, or a final disposition that does not result in a payment. The report must contain specified information on the claims or actions. The requirements apply to an insurer that provides professional liability insurance to specified licensed medical professionals and licensed hospitals, as well as to self-insured hospitals. A court may impose a penalty for failure to report as required.

Content of the Reports

The Bill: An insurer subject to the reporting requirements for medical professional liability insurance must notify the Commissioner of any proprietary information. The Commissioner must deny inspection of any part of a report that the Commissioner determines to have confidential commercial or financial information. The bill clarifies that the information required on specific claims be filed for each claim filed with the Director of the Health Care Alternative Dispute Resolution Office, which is where all

such claims must be filed, and makes various clarifying, technical, and other changes to the required information.

The bill requires the Commissioner to adopt regulations on the submission of the required information. The bill authorizes the Commissioner to impose a civil penalty of up to $5,000 for failing to report information as required.

Current Law: Chapter 5 requires an insurer that provides professional liability insurance to a health care provider to report on: (1) the nature and cost of reinsurance; (2) the claims experience, by category, or health care providers; (3) the amount of claim settlements and awards; (4) the amount of reserves; (5) the number of structured settlements used; and (6) any other information prescribed by the Commissioner. The Commissioner may require other insurers to provide substantially similar information.

Chapter 5 also specifies additional information that must be reported by these insurers, including information on the insurer, the policy, the type of injury, the type of institution at which the incident occurred, the patient status, the health care provider, and the outcome of the claim.

Maryland Health Care Provider Rate Stabilization Fund

The Bill: The bill repeals the Maryland Medical Professional Liability Insurance Rate Stabilization Fund and establishes the Maryland Health Care Provider Rate Stabilization Fund, using the same funding source, which is the repeal of the premium tax exemption for HMOs and MCOs. The repeal took effect January 1, 2005. However, for MCOs, the tax is not collected before April 1, 2005 under the bill.

The purposes of the fund are to retain health care providers in the State by allowing insurers to charge lower rates, increase fee-for-service rates paid by the Maryland Medical Assistance Program, pay specified MCO health care providers consistent with fee-for-service health care provider rates, and increase capitation payments to MCOs participating in the Maryland Medical Assistance Program.

Like the fund established under Chapter 5, this fund consists of two accounts: the Rate Stabilization Account and the Medical Assistance Program Account. The Commissioner is required to administer the fund.

During the period when an allocation is made to the Rate Stabilization Account (fiscal 2006 – 2009), the Commissioner may retain up to $350,000 to administer the fund. The remaining revenue and unallocated balance in the fund is allocated as follows:

- In fiscal 2005, $3,500,000 to the Medical Assistance Program Account.

- In fiscal 2006, $52,000,000 to the Rate Stabilization Account to pay for health care provider rate reductions, credits, or refunds in calendar 2005, and $30,000,000 to the Medical Assistance Program Account.

- In fiscal 2007, $45,000,000 to the Rate Stabilization Account for calendar 2006 reductions, credits, or refunds, and $45,000,000 to the Medical Assistance Program Account.

- In fiscal 2008, $35,000,000 to the Rate Stabilization Account for calendar 2007 reductions, credits, or refunds, and $65,000,000 to the Medical Assistance Program Account.

- In fiscal 2009, $25,000,000 to the Rate Stabilization Account for calendar 2008 reductions, credits, or refunds, and the remaining amount to the Medical Assistance Program Account.

- In fiscal 2010 and thereafter, the entire amount is allocated to the Medical Assistance Program Account.

Any revenue remaining in the fund after fiscal 2005 must remain in the fund until otherwise directed by law. If the allocations made in a fiscal year exceed revenues estimated for that year, the fund's unallocated balance may be substituted to the extent of the deficit.

If a medical professional liability insurer did not offer coverage in the previous calendar year in the State, the insurer is allocated up to 5% of the balance of the Rate Stabilization Account. If the Commissioner makes such an allocation, the money available to the other medical professional liability insurers is reduced on a pro rata basis. The bill specifies the order of preference for distributions from the fund. Disbursements from the Rate Stabilization Account may not exceed the amount necessary to provide a rate reduction, credit, or refund to specified health care providers, including physicians and nurse midwives. Any amount from the Rate Stabilization Account not used for these purposes must be returned for reversion to the fund. A participating insurer must reduce the subsidy paid to each provider electing to receive a subsidy if the account's balance is insufficient to pay for the subsidies.

Participating insurers at least annually must determine the amount of the subsidy for each policyholder and send a notice stating the estimated amount of the State's subsidy and the

procedure for electing not to receive a subsidy should the provider choose not to under the bill. A subsidy may not include a premium surcharge or loss of a discount due to a health care provider's loss experience.

The Commissioner must make disbursements for the subsidies on a quarterly basis and within 60 days after receiving a request for reimbursement from the fund. For premiums paid in an installment basis, the reduction or credit must be applied against the base premium rate due on the next installment. If the amount of the reduction or credit is more than the next installment or if a policy is paid in full, the policyholder may elect a refund or a credit against the next renewal of the policy.

For mutual insurers, a disbursement must be reduced by the value of a dividend that it might issue. The Commissioner may not make a disbursement to the Medical Mutual Society of Maryland if the Commissioner has determined that the society's surplus is excessive.

By November 1 of each year from 2005 to 2007, the Commissioner must determine the amount of the percentage of the following year's subsidy factor that an insurer must use based on the amount allocated to the Rate Stabilization Account. The Commissioner must then notify insurers via a bulletin and report specified information on the subsidy program to the Legislative Policy Committee.

The Commissioner must distribute money from the Medical Assistance Program Account to the Secretary of Health and Mental Hygiene. In fiscal 2005, the money must be used to increase capitation rates paid to MCOs. Beginning in fiscal 2006, $15 million must be used to increase fee-for-service rates and to pay MCO health care providers consistent with the rates for procedures commonly performed by obstetricians, neurosurgeons, orthopedic surgeons, and emergency medicine physicians. Portions of the account that exceed these amounts may only be used to: (1) increase capitation rates; (2) increase fee-for-service rates; (3) pay MCO providers consistent with these rates; and (4) after fiscal 2009, maintain capitation payments, maintain provider rates, and support the operations of the program.

The bill specifies the method for determining the rate increases and requires the Secretary to submit the plan to specified committees of the General Assembly before adopting the regulations implementing the increase.

The Office of Legislative Audits (OLA) must audit the fund and its accounts annually. The Commissioner must report annually to the Legislative Policy Committee specified information on the fund, its accounts, and allocations made. The OLA report must be part of the Commissioner's report.

Current Law: The Commissioner may enter into four one-year agreements with a medical professional liability insurer for disbursements from the fund's rate stabilization account. For an agreement covering a 12-month period initiated on or after January 1, 2005, the base premium that an insurer may charge, less the value of the guarantee provided for each specialty, may not exceed the base premium for the previous 12-month period by more than 5%. For an agreement applicable to any other year, the insurer must maintain rates allowed under an approved rate filing for that period, less the value of the guarantee provided. Chapter 5 prohibits a disbursement to the Medical Mutual Liability Insurance Society of Maryland (the society) during a period for which the Commissioner has determined that the society's surplus is excessive. The fund receives money from the premium tax imposed on HMOs and MCOs.

A medical professional liability insurer must establish a separate account that is credited with: (1) earned premium on policies delivered during the agreement; (2) specified investment income; (3) the value of any dividend for a mutual insurer; and (4) the lesser of 10% of the insurer's surplus if the insurer has a risk based capital (RBC) ratio of at least 600% or the excess of the RBC ratio over 600% on the date the agreement is executed. The account must have specified debits, including indemnity payments and reinsurance costs. The fund's rate stabilization account may not incur an obligation under an agreement until the insurer's account exceeds the amount credited to it. Insurers must apply to the Commissioner in order to receive payment.

Disbursements from the Medical Assistance Program Account of $15,000,000 must be made to the Maryland Medical Assistance Program to increase both the fee-for-services physicians and capitation payments to MCOs for procedures commonly performed by obstetricians, neurosurgeons, orthopedic surgeons, and emergency medicine physicians. Additional funds from the Medical Assistance Program Account must be used to increase payments to physicians and capitation payments to MCOs.

The Commissioner may retain up to 0.5% of the money collected for the fund each year for administrative costs. After that the allocation is as follows:

- In fiscal 2005, $6,000,000 to the Medical Assistance Program Account.

- In fiscal 2006, $40,700,000 to the Rate Stabilization Account to reduce medical professional liability insurance premiums for agreements for calendar 2005, and $33,300,000 to the Medical Assistance Program Account.

- In fiscal 2007, $33,400,000 to the Rate Stabilization Account, and $46,600,000 to the Medical Assistance Program Account.

- In fiscal 2008, $26,100,000 to the Rate Stabilization Account, and the remaining amount to the Medical Assistance Program Account.

- In fiscal 2009, $18,800,000 to the Rate Stabilization Account, and the remaining amount to the Medical Assistance Program Account.

- In fiscal 2010 and thereafter, the entire amount to the Medical Assistance Program Account.

The Governor must propose legislation during the 2006 General Assembly session to provide an alternative mechanism for distributing the money in the fund.

Any estimated amount reserved by a medical professional liability insurer in payment of a claim as of December 31, 2013, must be paid from the Rate Stabilization Account to the insurer. Any portion of the Rate Stabilization Account that exceeds the amount necessary to meet the fund's obligations reverts to the Medical Assistance Program Account. Any payments from the Rate Stabilization Account to an insurer not used in payment of unresolved claims identified as of December 31, 2013, must be returned to the general fund.

Medical Mutual Liability Insurance Society of Maryland

The Bill: The bill provides that "surplus" does not include the society's debt incurred in accordance with provisions governing mutual insurer loans made to comply with a surplus requirement. If the society requests a rate increase of more than 7.5% and, at the time of the rate filing, the society's surplus is more than 500% of its authorized control level RBC, the Commissioner may determine whether the surplus is excessive. If after a hearing, the Commissioner determines that the surplus is excessive, the Commissioner may order the society's filed rates to be reduced.

The bill repeals requirements under Chapter 5 that the society offer policyholders the opportunity to purchase policies directly and offer a discount.

Current Law: Before a rate filing by the society that would increase premiums by more than 7.5% in the aggregate may take effect, the Commissioner must determine whether the society's other financial resources could be prudently applied rather than a premium rate increase. If the Commissioner finds that other resources may be used, the Commissioner must order rates reduced. The Commissioner may determine that the society's surplus is excessive if: (1) the total surplus is greater than the appropriate RBC requirements for the immediately preceding calendar year; and (2) the Commissioner,

after a hearing, determines that the surplus is unreasonably large. If the Commissioner determines that the society's surplus is excessive, the Commissioner may not approve a rate increase for the society until the surplus is no longer excessive.

The society must offer policyholders and potential policyholders the option to purchase and must renew coverage directly. If a policyholder purchases or renews directly, the society must provide a discount or rebate equaling the commission that the society would have paid an insurance producer to sell the same policy less 1% for administrative costs.

Policy Cancellations

The Bill: The bill repeals the provision exempting a medical professional liability insurer from the prohibition against canceling or refusing to underwrite except for reasons reasonably related to the insurer's economic and business purposes. This reflects the will of the Conference Committee to HB 2 of the 2004 Special Session, which became Chapter 5.

Current Law: An insurer or insurance producer that issues or delivers a medical professional liability policy to a medical professional who has been licensed for three or more years is exempt from the prohibition against canceling or refusing to underwrite or renew a particular insurance risk except by standards that are reasonably related to the insurer's economic and business purposes. Otherwise, an insurer is prohibited from canceling or refusing to underwrite or renew a particular insurance risk except by standards that are reasonably related to the insurer's economic and business purposes.

Insurance People's Counsel

The Bill: The bill specifies that the assessment to pay for the expenses of People's Insurance Counsel Division is in addition to any penalties or premium tax imposed on the insurer. The Insurance Commissioner must determine the date on which the assessment is due and payable. An insurer's failure to pay by the due date may subject it to penalties and interest. The bill authorizes the division to appear before the Commissioner and in court on behalf of medical professional liability insurance and homeowners insurance consumers after determining that their interests are affected, rather than requiring the division to do so.

Current Law: The division may appear before the Commissioner or in court to represent the interests of homeowners insurance and medical professional liability insurance consumers in the State and must review any proposed rate increase of 10% or more for these insurance consumers. The division's expenses are paid from a special fund, funded

by an assessment on insurers that sell homeowners or medical professional liability insurance.

State Fiscal Effect: Chapter 5 repealed the premium tax exemption for HMOs and MCOs, effective January 1, 2005. However, under this bill the tax may not be collected from MCOs before April 1, 2005. Because of this, special fund revenues would decrease by $7,079,070 in fiscal 2005, from $35,280,218 to $28,201,148.

The bill dedicates the revenue from Chapter 5 to the Maryland Health Care Provider Rate Stabilization Fund established under this bill. However, the bill changes the allocation of expenditures for the Rate Stabilization Account and the Medical Assistance Program Account in the fund. The bill authorizes MIA to retain $150,000 in a year when there is an allocation to the Rate Stabilization Account to cover the costs of maintaining the fund and making distributions from this account. Revenues and expenditures related to the fund are shown in **Exhibit 1**. Revenues reflect information updated since passage of Chapter 5.

Additional Information

Prior Introductions: None.

Cross File: HB 1359 (The Speaker, *et al.*) – Economic Matters and Health and Government Operations.

Information Source(s): Maryland Insurance Administration, Department of Health and Mental Hygiene, Healthcare Alternative Dispute Resolution Office, Department of Legislative Services

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Exhibit 1

	Starting Balance	Premium Tax Revenue	Administrative Allowance	To Fund	Rate Stabilization Account	Medical Assistance Program Account	Ending Balance
FY 2005	$0	$28,201,148	$0	$28,201,148	$0	$3,500,000	$24,701,148
FY 2006	24,701,148	77,441,056	350,000	77,091,056	52,000,000	30,000,000	19,792,204
FY 2007	19,792,204	85,066,478	350,000	84,716,478	45,000,000	45,000,000	14,508,682
FY 2008	14,508,682	93,522,770	350,000	93,172,770	35,000,000	65,000,000	7,681,452
FY 2009	7,681,452	102,906,310	350,000	102,556,310	25,000,000	85,237,762	0
FY 2010	0	113,325,037	0	113,325,037	0	113,325,037	0