

SENATE BILL 881

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SB 682/05 – FIN & JPR

By: **Senators Harris and Zirkin**

Introduced and read first time: February 21, 2007

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **No-Fault Cerebral Palsy Insurance Fund**

3 FOR the purpose of establishing certain procedures to be followed if the response to a
4 claim against a health care provider for damage due to a medical injury includes
5 an assertion that the claim is subject to certain other procedures relating to
6 birth-related neurological impairments; altering the purposes of the Maryland
7 Health Care Provider Rate Stabilization Fund to include paying certain medical
8 expenses of individuals with birth-related neurological impairments; requiring
9 a certain portion of the Medical Assistance Program Account to be used to pay
10 these expenses; requiring disbursements from the Medical Assistance Program
11 Account to be made to the No-Fault Cerebral Palsy Insurance Fund in a certain
12 amount; establishing the No-Fault Cerebral Palsy Insurance Fund to pay
13 certain expenses of claimants who are diagnosed as having a birth-related
14 neurological impairment under certain circumstances; requiring the Director of
15 the Fund to administer the Fund; requiring the Director to be appointed by and
16 serve at the pleasure of the Maryland Insurance Commissioner; providing that
17 the Fund is a special, nonlapsing fund; requiring the State Treasurer to hold the
18 Fund separately and the Comptroller to account for the Fund; requiring the
19 Insurance Commissioner to adopt certain regulations; providing that the Fund
20 consists of revenue distributed to the Fund from the Medical Assistance
21 Program Account, interest and other income, and certain other money;
22 authorizing the Fund to be used only to pay claims under the Fund and the
23 costs of administering the Fund; establishing that the rights and remedies
24 under the Fund exclude all other rights and remedies for birth-related
25 neurological impairments under certain circumstances; establishing that filing
26 a civil action for a birth-related neurological impairment is not precluded under

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain circumstances; establishing procedures for the determination of
2 coverage under the Fund; establishing procedures to appeal a certain
3 determination of coverage to a certain arbitration panel; providing for an appeal
4 of the determination of the arbitration panel to a certain circuit court;
5 establishing procedures for certain payments from the Fund in certain amounts
6 under certain circumstances; prohibiting compensation for legal services in
7 connection with claims under the Fund except under certain circumstances;
8 requiring the Director to report all claims under the Fund to the State Board of
9 Physicians for a certain determination; requiring medical professional liability
10 insurers to identify in rate filings any savings that result from the Fund and to
11 decrease rates to reflect that savings; defining certain terms; providing for the
12 application of this Act; and generally relating to an insurance fund for children
13 with birth-related neurological impairments.

14 BY repealing and reenacting, with amendments,

15 Article – Courts and Judicial Proceedings

16 Section 3-2A-04(a)

17 Annotated Code of Maryland

18 (2006 Replacement Volume)

19 BY repealing and reenacting, with amendments,

20 Article – Insurance

21 Section 19-802 and 19-807

22 Annotated Code of Maryland

23 (2006 Replacement Volume and 2006 Supplement)

24 BY adding to

25 Article – Insurance

26 Section 19-901 through 19-911 to be under the new subtitle “Subtitle 9.

27 No-Fault Cerebral Palsy Insurance Fund”

28 Annotated Code of Maryland

29 (2006 Replacement Volume and 2006 Supplement)

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

32 **Article – Courts and Judicial Proceedings**

33 3-2A-04.

34 (a) (1) (i) A person having a claim against a health care provider for
35 damage due to a medical injury shall file the claim with the Director and, if the claim

1 is against a physician, the Director shall forward copies of the claim to the State Board
2 of Physicians.

3 (ii) The Director shall cause a copy of the claim to be served
4 upon the health care provider by the appropriate sheriff in accordance with the
5 Maryland Rules.

6 (iii) The health care provider shall file a response with the
7 Director and serve a copy on the claimant and all other health care providers named
8 therein within the time provided in the Maryland Rules for filing a responsive
9 pleading to a complaint.

10 (iv) The claim and the response may include a statement that
11 the matter in controversy falls within one or more particular recognized specialties.

12 (2) A third-party claim shall be filed within 30 days of the response of
13 the third-party claimant to the original claim unless the parties consent to a later
14 filing or a later filing is allowed by the panel chairman or the court, as the case may
15 be, for good cause shown.

16 (3) A claimant may not add a new defendant after the arbitration
17 panel has been selected, or 10 days after the prehearing conference has been held,
18 whichever is later.

19 (4) Until all costs attributable to the first filing have been satisfied, a
20 claimant may not file a second claim on the same or substantially the same grounds
21 against any of the same parties.

22 (5) (I) **IF THE RESPONSE OF A HEALTH CARE PROVIDER**
23 **INCLUDES AN ASSERTION THAT THE CLAIM IS SUBJECT TO THE EXCLUSIVE**
24 **PROCEDURES OF TITLE 19, SUBTITLE 9 OF THE INSURANCE ARTICLE:**

25 1. **THE DIRECTOR SHALL STAY THE PROCEEDINGS**
26 **UNDER THIS SUBTITLE; AND**

27 2. **THE CLAIMANT SHALL FILE A CLAIM FOR**
28 **COVERAGE WITH THE NO-FAULT CEREBRAL PALSY INSURANCE FUND UNDER**
29 **TITLE 19, SUBTITLE 9 OF THE INSURANCE ARTICLE.**

4 (III) IF COVERAGE UNDER TITLE 19, SUBTITLE 9 OF THE
5 INSURANCE ARTICLE IS DENIED AND FURTHER CLAIMS ARE NOT PROHIBITED
6 UNDER § 19-904 OF THE INSURANCE ARTICLE, THE CLAIMANT MAY PROCEED
7 WITH THE CLAIM UNDER THIS SUBTITLE.

Article - Insurance

9 19-802.

10 (a) There is a Maryland Health Care Provider Rate Stabilization Fund.

11 (b) The purposes of the Fund are to:

17 (3) pay managed care organization health care providers identified
18 under § 19–807 of this subtitle consistent with fee–for–service health care provider
19 rates;

20 (4) increase capitation payments to managed care organizations
21 participating in the Maryland Medical Assistance Program consistent with §
22 15-103(b)(18) of the Health – General Article; [and]

27 [5] (6) during the period that an allocation is made to the Rate
28 Stabilization Account, subsidize up to \$350,000 annually to provide for the costs
29 incurred by the Commissioner to administer the Fund.

(c) The Fund shall consist of:

(1) the revenue from the tax imposed on health maintenance organizations and managed care organizations under § 6-102 of this article;

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

(3) any other money from any other source accepted for the benefit of

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

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

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

(g) The Fund comprises:

(1) the Rate Stabilization Account from which disbursements shall be made to pay for health care provider rate subsidies; and

(2) the Medical Assistance Program Account from which disbursements shall be made to:

(i) provide an increase in fee-for-service health care provider rates paid by the Maryland Medical Assistance Program;

(ii) provide an increase for managed care organization health care providers consistent with fee-for-service health care provider rate increases;

(iii) provide an increase in capitation payments to managed care organizations participating in the Maryland Medical Assistance Program consistent with § 15-103(b)(18) of the Health – General Article; [and]

(IV) PROVIDE REVENUE TO THE NO-FAULT CEREBRAL PALSY INSURANCE FUND; AND

4 19-807.

12 (b) (1) In fiscal year 2005, disbursements from the Medical Assistance
13 Program Account shall be used by the Secretary to increase capitation rates paid to
14 managed care organizations.

21 (i) obstetricians;

22 (ii) neurosurgeons;

23 (iii) orthopedic surgeons; and

24 (iv) emergency medicine physicians.

29 (i) increase capitation payments to managed care organizations
30 consistent with § 15-103(b)(18) of the Health – General Article;

- (ii) increase fee-for-service health care provider rates;
- (iii) pay managed care organization health care providers fee-for-service health provider rates; and
- (iv) after fiscal year 2008:
 - 1. maintain increased capitation payments to managed care organizations;
 - 2. maintain increased rates for health care providers;
 - 3. in accordance with § 6-121(b)(3) of this article, expand the provision of office-based specialty care, diagnostic testing, and laboratory services to individuals with family income that does not exceed 200% of the federal poverty level;
 - 4. support generally the operations of the Maryland Health Benefit Exchange Program.

14 (c) (1) Health care provider rate increases under subsection (b)(2) and
15 (3)(ii), (iii), and (iv)2 of this section shall be determined by the Secretary in
16 consultation with managed care organizations, the Maryland Hospital Association, the
17 Maryland State Medical Society, the American Academy of Pediatrics, Maryland
18 Chapter, and the American College of Emergency Room Physicians, Maryland
19 Chapter.

25 (D) (1) PORTIONS OF THE MEDICAL ASSISTANCE PROGRAM
26 ACCOUNT THAT EXCEED THE AMOUNT PROVIDED UNDER SUBSECTION (B)(2) OF
27 THIS SECTION SHALL BE USED TO PAY MEDICALLY NECESSARY AND OTHER
28 RELATED EXPENSES OF INDIVIDUALS WITH BIRTH-RELATED NEUROLOGICAL
29 IMPAIRMENTS.

1 INSURANCE FUND ESTABLISHED UNDER SUBTITLE 9 OF THIS TITLE IN AN
2 AMOUNT SUFFICIENT TO PAY ITS CLAIMS AND ADMINISTRATIVE COSTS.

3 **SUBTITLE 9. NO-FAULT CEREBRAL PALSY INSURANCE FUND.**

4 **19-901.**

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (B) (1) "BIRTH-RELATED NEUROLOGICAL IMPAIRMENT" OR
8 "CEREBRAL PALSY" MEANS AN IMPAIRMENT OF THE BRAIN, SPINAL CORD, OR
9 NERVE OF AN INFANT THAT:

10 (I) OCCURRED OR COULD HAVE OCCURRED DURING
11 PREGNANCY, BEFORE OR DURING A DELIVERY, OR IN THE IMMEDIATE
12 RESUSCITATIVE PERIOD AFTER A DELIVERY; AND

13 (II) RESULTS IN A SIGNIFICANT AND NONPROGRESSIVE
14 INABILITY TO CONTROL MOTOR FUNCTION.

15 (2) A BIRTH-RELATED NEUROLOGICAL IMPAIRMENT OR
16 CEREBRAL PALSY MAY BE ACCCOMPANIED BY ONE OR MORE ASSOCIATED
17 SYMPTOMS INCLUDING:

18 (I) VISION, SPEECH, HEARING, OR LEARNING
19 DIFFICULTIES;

20 (II) SEIZURES; OR

21 (III) BEHAVIORAL AND PSYCHOLOGICAL PROBLEMS.

22 (3) "BIRTH-RELATED NEUROLOGICAL IMPAIRMENT" OR
23 "CEREBRAL PALSY" DOES NOT INCLUDE DISABILITY CAUSED BY GENETIC OR
24 CONGENITAL ABNORMALITY.

25 (C) "CLAIMANT" MEANS AN INFANT BORN IN THE STATE WHO HAS BEEN
26 DIAGNOSED AS HAVING CEREBRAL PALSY OR A BIRTH-RELATED
27 NEUROLOGICAL IMPAIRMENT.

1 **(D) "DIRECTOR" MEANS THE DIRECTOR OF THE FUND.**

2 **(E) "FUND" MEANS THE NO-FAULT CEREBRAL PALSY INSURANCE**
3 **FUND.**

4 **(F) "HEALTH CARE FACILITY" HAS THE MEANING STATED IN § 19-114**
5 **OF THE HEALTH - GENERAL ARTICLE.**

6 **(G) "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL WHO IS**
7 **LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH**
8 **OCCUPATIONS ARTICLE TO PROVIDE HEALTH CARE SERVICES.**

9 **(H) (1) "PHYSICIAN" MEANS AN INDIVIDUAL LICENSED TO PRACTICE**
10 **MEDICINE IN THE STATE.**

11 **(2) "PHYSICIAN" INCLUDES AN INDIVIDUAL WHO LEGALLY**
12 **PRACTICES MEDICINE WITHOUT A LICENSE UNDER § 14-302(1), (2), (3), OR (4)**
13 **OF THE HEALTH OCCUPATIONS ARTICLE.**

14 **19-902.**

15 **(A) THERE IS A NO-FAULT CEREBRAL PALSY INSURANCE FUND.**

16 **(B) THE PURPOSE OF THE FUND IS TO PAY TO CLAIMANTS WHO ARE**
17 **DIAGNOSED AS HAVING A BIRTH-RELATED NEUROLOGICAL IMPAIRMENT THE**
18 **MEDICALLY NECESSARY AND REASONABLE EXPENSES OF MEDICAL, HOSPITAL,**
19 **REHABILITATIVE, RESIDENTIAL, AND CUSTODIAL CARE AND SERVICE, SPECIAL**
20 **EQUIPMENT OR FACILITIES, AND RELATED TRAVEL NECESSITATED BY THE**
21 **BIRTH-RELATED NEUROLOGICAL IMPAIRMENT AND ASSOCIATED DISABILITIES.**

22 **(C) THE DIRECTOR SHALL ADMINISTER THE FUND.**

23 **(D) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT**
24 **SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

25 **(2) THE TREASURER SHALL HOLD THE FUND SEPARATELY, AND**
26 **THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

3 (E) THE FUND CONSISTS OF:

4 (1) REVENUE DISTRIBUTED TO THE FUND FROM THE MEDICAL
5 ASSISTANCE PROGRAM ACCOUNT OF THE MARYLAND HEALTH CARE
6 PROVIDER RATE STABILIZATION FUND ESTABLISHED UNDER § 19-802 OF THIS
7 TITLE;

12 (F) THE FUND MAY BE USED ONLY TO PAY:

(2) THE COSTS OF ADMINISTERING THE FUND.

15 19-903.

16 (A) **THE COMMISSIONER SHALL APPOINT THE DIRECTOR OF THE FUND.**

17 (B) THE DIRECTOR SERVES AT THE PLEASURE OF THE COMMISSIONER.

18 **(C) THE COMMISSIONER MAY ADOPT REASONABLE REGULATIONS TO**
19 **CARRY OUT THIS SUBTITLE.**

20 19-904.

1 **(B) A CLAIMANT OR A CLAIMANT'S LEGAL REPRESENTATIVE IS NOT**
2 **PRECLUDED FROM FILING A CIVIL ACTION AGAINST A HEALTH CARE PROVIDER**
3 **OR HEALTH CARE FACILITY FOR A BIRTH-RELATED NEUROLOGICAL**
4 **IMPAIRMENT IF THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE**
5 **HEALTH CARE PROVIDER OR HEALTH CARE FACILITY DELIBERATELY CAUSED**
6 **THE BIRTH-RELATED NEUROLOGICAL IMPAIRMENT.**

7 **19-905.**

8 **(A) A CLAIM FOR COVERAGE FROM THE FUND UNDER THIS SUBTITLE**
9 **MAY BE FILED BY:**

10 **(1) A CLAIMANT; OR**

11 **(2) THE LEGAL REPRESENTATIVE OF A CLAIMANT.**

12 **(B) IF AN INITIAL CLAIM FOR COVERAGE IS NOT FILED BEFORE THE**
13 **CLAIMANT'S THIRD BIRTHDAY, COMPENSATION FROM THE FUND SHALL BE**
14 **LIMITED TO EXPENSES INCURRED ON OR AFTER THE DATE OF FILING.**

15 **(C) THE DIRECTOR MAY REQUIRE:**

16 **(1) ANY PERSON WITH INFORMATION ABOUT THE CLAIM TO**
17 **PROVIDE THE INFORMATION THE DIRECTOR CONSIDERS NECESSARY FOR THE**
18 **EVALUATION OF THE CLAIM; AND**

19 **(2) THE CLAIMANT TO SUBMIT TO EXAMINATION OR TESTING.**

20 **(D) (1) AS SOON AS PRACTICABLE AFTER THE FILING OF A CLAIM FOR**
21 **COVERAGE, THE DIRECTOR SHALL EVALUATE THE CLAIM AND DETERMINE**
22 **WHETHER OR NOT THE CLAIMANT HAS A BIRTH-RELATED NEUROLOGICAL**
23 **IMPAIRMENT.**

24 **(2) IF THE DIRECTOR IS UNABLE TO DETERMINE WHETHER OR**
25 **NOT THE CLAIMANT HAS A BIRTH-RELATED NEUROLOGICAL IMPAIRMENT, THE**
26 **DIRECTOR SHALL ISSUE A DETERMINATION THAT THE DIAGNOSIS IS**
27 **PRESENTLY UNCERTAIN.**

(3) A CLAIMANT OR THE CLAIMANT'S LEGAL REPRESENTATIVE

(I) APPEAL A DETERMINATION OF UNCERTAINTY UNDER THIS SUBSECTION TO AN ARBITRATION PANEL UNDER § 19-906 OF THIS SUBTITLE; OR

(II) RESUBMIT THE CLAIM TO THE FUND AT LEAST 1 YEAR
BUT NOT MORE THAN 3 YEARS AFTER THE DETERMINATION OF UNCERTAINTY.

8 **(E) THE DIRECTOR PROMPTLY SHALL NOTIFY THE CLAIMANT OR THE**
9 **CLAIMANT'S LEGAL REPRESENTATIVE OF THE DIRECTOR'S DETERMINATION**
10 **UNDER THIS SECTION.**

11 19-906.

16 (2) AN APPEAL UNDER THIS SECTION SHALL BE FILED WITHIN 60
17 DAYS AFTER RECEIPT OF NOTIFICATION UNDER § 19-905(E) OF THIS SUBTITLE.

18 **(B) (1) IF AN APPEAL IS TIMELY FILED, THE DIRECTOR SHALL**
19 **APPOINT AN ARBITRATION PANEL OF THREE PHYSICIANS WHO ARE BOARD**
20 **CERTIFIED IN NEUROLOGY OR PEDIATRICS TO REVIEW THE DETERMINATION.**

21 (2) THE PANEL CONSISTS OF:

22 (I) ONE PHYSICIAN CHOSEN BY THE CLAIMANT OR THE
23 CLAIMANT'S REPRESENTATIVE;

(II) ONE PHYSICIAN CHOSEN BY THE DIRECTOR; AND

25 (III) ONE PHYSICIAN AGREED ON BY THE PHYSICIANS
26 CHOSEN UNDER ITEMS (I) AND (II) OF THIS PARAGRAPH.

4 19-907.

5 (A) ON ARBITRATION PANELS CONSISTING OF THREE PHYSICIANS, THE
6 PHYSICIAN AGREED ON BY THE OTHER TWO PHYSICIANS SHALL SERVE AS CHAIR
7 OF THE PANEL.

8 (B) A VOTE OF THE MAJORITY OF THE PANEL SHALL BE BINDING ON
9 THE PANEL.

14 (2) THE CLAIMANT TO SUBMIT TO EXAMINATION OR TESTING.

15 (D) (1) THE DETERMINATION OF THE PANEL AS TO WHETHER OR NOT
16 THE CLAIMANT HAS A BIRTH-RELATED NEUROLOGICAL IMPAIRMENT IS FINAL
17 AND BINDING ON THE FUND.

22 (3) A DETERMINATION OF UNCERTAINTY UNDER THIS
23 SUBSECTION MAY BE RESUBMITTED TO THE FUND AT LEAST 1 YEAR BUT NOT
24 MORE THAN 3 YEARS AFTER THE DETERMINATION OF UNCERTAINTY.

7 (G) THE FUND SHALL PAY THE MEMBERS OF THE PANEL A FEE
8 ESTABLISHED BY THE DIRECTOR.

12 19-908.

22 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
23 SUBSECTION, PAYMENTS BY THE FUND:

24 (I) MAY NOT EXCEED \$30,000 EACH YEAR FOR ANY
25 CLAIMANT; AND

26 (II) MAY BE MADE ONLY FOR EXPENSES INCURRED BEFORE
27 THE CLAIMANT ATTAINS THE AGE OF 21 YEARS OLD.

4 (D) PAYMENTS MADE BY THE FUND MAY NOT INCLUDE EXPENSES FOR
5 ITEMS THE CLAIMANT HAS RECEIVED OR IS ENTITLED TO RECEIVE:

6 (1) UNDER OTHER STATE OR FEDERAL LAW; OR

10 19-909.

11 **A PERSON MAY NOT CHARGE OR COLLECT COMPENSATION FOR LEGAL
12 SERVICES IN CONNECTION WITH ANY CLAIMS ARISING UNDER THIS SUBTITLE
13 UNLESS THE COMPENSATION IS APPROVED BY THE DIRECTOR.**

14 19-910.

15 THE DIRECTOR SHALL REPORT ALL CLAIMS UNDER THIS SUBTITLE TO
16 THE STATE BOARD OF PHYSICIANS FOR REVIEW TO DETERMINE WHETHER
17 THERE ARE GROUNDS FOR DISCIPLINARY ACTION FOR FAILING TO MEET
18 APPROPRIATE STANDARDS FOR DELIVERY OF QUALITY MEDICAL CARE.

19 19-911.

20 **AN INSURER THAT PROVIDES MEDICAL PROFESSIONAL LIABILITY**
21 **INSURANCE TO HEALTH CARE PROVIDERS IN THE STATE SHALL:**

22 (1) IDENTIFY IN ITS RATE FILING ANY SAVINGS THAT RESULT
23 FROM THIS SUBTITLE; AND

24 (2) DECREASE THE INSURANCE RATES CHARGED TO HEALTH
25 CARE PROVIDERS TO REFLECT THAT SAVINGS.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
27 construed to apply only prospectively and may not be applied or interpreted to have
28 any effect on or application to any individual born before the effective date of this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2007.