

## **CHAPTER 175**

### **(House Bill 372)**

AN ACT concerning

#### **Medical Malpractice Liability Insurance – Garrett County Memorial Hospital – Subsidy for Family Practitioners Who Also Perform Obstetrical Services**

FOR the purpose of requiring a certain subsidy for certain calendar years for medical professional liability insurance policies issued to family practitioners who have staff privileges at Garrett County Memorial Hospital and who also provide obstetrical services at the Hospital; requiring certain amounts to remain in the Rate Stabilization Account to pay for certain subsidies; requiring medical professional liability insurers to include, if applicable, a certain subsidy in the information required to be submitted to the Maryland Insurance Commissioner to receive money from the Rate Stabilization Account; providing a certain exception to the requirement that a certain disbursement from the Rate Stabilization Account be reduced by a certain amount and the prohibition on a disbursement from the Account to a certain entity under certain circumstances; providing for the termination of this Act; and generally relating to a subsidy for medical professional liability insurance policies issued to family practitioners in Garrett County who also provide obstetrical services in Garrett County.

BY repealing and reenacting, without amendments,

Article – Insurance

Section 19–801(a) and (b), 19–802(a), (b), and (g), and 19–803

Annotated Code of Maryland

(2006 Replacement Volume and 2006 Supplement)

BY repealing and reenacting, with amendments,

Article – Insurance

Section 19–804 and 19–805

Annotated Code of Maryland

(2006 Replacement Volume and 2006 Supplement)

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

#### **Article – Insurance**

19-801.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Fund” means the Maryland Health Care Provider Rate Stabilization Fund.

19-802.

- (a) There is a Maryland Health Care Provider Rate Stabilization Fund.
- (b) The purposes of the Fund are to:
  - (1) retain health care providers in the State by allowing medical professional liability insurers to collect rates that are less than the rates approved under § 11-201 of this article;
  - (2) increase fee-for-service rates paid by the Maryland Medical Assistance Program to health care providers identified under § 19-807 of this subtitle;
  - (3) pay managed care organization health care providers identified under § 19-807 of this subtitle consistent with fee-for-service health care provider rates;
  - (4) increase 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
  - (5) during the period that an allocation is made to the Rate Stabilization Account, subsidize up to \$350,000 annually to provide for the costs incurred by the Commissioner to administer the Fund.
- (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) after fiscal year 2009, maintain rates for health care providers and generally to support the operations of the Maryland Medical Assistance Program.

19-803.

(a) The Commissioner shall administer the Fund.

(b) Notwithstanding § 2-114 of this article:

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

(2) during the period an allocation is made to the Rate Stabilization Account, the Commissioner may distribute up to \$350,000 annually from the revenue estimated to be received by the Fund in a fiscal year to provide for the costs incurred by the Commissioner to administer the Fund;

(3) after distributing the amount required under paragraph (2) of this subsection, the Commissioner shall allocate the revenue and unallocated balance of the Fund according to the following schedule:

(i) in fiscal year 2005, \$3,500,000 to the Medical Assistance Program Account;

(ii) in fiscal year 2006:

1. \$52,000,000 to the Rate Stabilization Account to pay for health care provider rate reductions, credits, or refunds in calendar year 2005; and

2. \$30,000,000 to the Medical Assistance Program Account;

(iii) in fiscal year 2007:

1. \$45,000,000 to the Rate Stabilization Account to pay for health care provider rate reductions, credits, or refunds in calendar year 2006; and

2. \$45,000,000 to the Medical Assistance Program Account;

(iv) in fiscal year 2008:

1. \$35,000,000 to the Rate Stabilization Account to pay for health care provider rate reductions, credits, or refunds in calendar year 2007; and

2. \$65,000,000 to the Medical Assistance Program Account;

(v) in fiscal year 2009:

1. \$25,000,000 to the Rate Stabilization Account to pay for health care provider rate reductions, credits, or refunds in calendar year 2008; and

2. the remaining revenue to the Medical Assistance Program Account; and

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

(c) (1) Any revenue remaining in the Fund after fiscal year 2005 shall remain in the Fund until otherwise directed by law.

(2) If in any fiscal year the allocations made under this section exceed the revenues estimated for that year, amounts available in the unallocated balance of the Fund may be substituted to the extent of a Fund deficit.

(d) (1) If a medical professional liability insurer provides coverage to a health care provider and that insurer did not earn premiums in the previous calendar year in the State, that insurer shall be allocated 5% of the balance of the Rate Stabilization Account or a lesser amount as determined by the Commissioner.

(2) If an allocation is made under paragraph (1) of this subsection, the funds available to other medical professional liability insurers shall be reduced on a pro rata basis.

19-804.

(a) The order of preference for distribution from the Fund shall be as follows:

(1) disbursements from the Rate Stabilization Account to subsidize health care provider rates under § 19-805 of this subtitle;

(2) disbursements from the Medical Assistance Program Account sufficient to:

(i) pay for increased rates to health care providers identified under § 19-807(b)(2) of this subtitle; and

(ii) pay managed care organization health care providers identified under § 19-807(b)(2) of this subtitle consistent with the fee-for-service health care provider rate increases;

(3) disbursements to maintain the increase in health care provider reimbursements under § 19-807(b)(2) of this subtitle;

(4) disbursements to increase 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

(5) disbursements from the Medical Assistance Program Account to:

(i) increase fee-for-service health care provider rates under § 19-807 of this subtitle; and

(ii) pay managed care organization health care providers consistent with fee-for-service health care provider rates under § 19-807(b)(3) of this subtitle.

(b) Disbursements from the Rate Stabilization Account to a medical professional liability insurer may not exceed the amount necessary to provide a rate reduction, credit, or refund to health care providers.

(c) (1) Portions of the Rate Stabilization Account that exceed the amount necessary to pay for health care provider subsidies shall remain in the Rate Stabilization Account to be used:

(i) to pay for health care provider subsidies in calendar years 2006 through 2008; and

(ii) after the fiscal year 2009 allocation to the Rate Stabilization Account under § 19–803(b) of this subtitle, by the Medical Assistance Program Account for the purposes specified under § 19–807(b) of this subtitle.

(2) Any disbursements from the Rate Stabilization Account to a medical professional liability insurer that is not used to provide a rate reduction, credit, or refund to a health care provider shall be returned to the State Treasurer for reversion to the Fund.

**(3) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AMOUNTS NECESSARY TO PAY FOR HEALTH CARE PROVIDER SUBSIDIES UNDER § 19–805(B)(3) OF THIS SUBTITLE SHALL REMAIN IN THE RATE STABILIZATION ACCOUNT.**

(d) A medical professional liability insurer shall reduce the subsidy paid to each health care provider electing to receive a subsidy if the balance of the Rate Stabilization Account is insufficient to pay health care provider subsidies.

19–805.

(a) (1) Participation in the Fund by a medical professional liability insurer shall be voluntary.

(2) On at least an annual basis, a medical professional liability insurer seeking reimbursement from the Rate Stabilization Account shall:

(i) determine the amount of the subsidy for each policyholder;  
and

(ii) send a written notice to each policyholder stating:

1. the amount of the estimated annual subsidy provided by the State; and
2. the procedure a health care provider shall follow if electing not to receive a rate reduction, credit, or refund.

(b) Subject to § 19–804(d) of this subtitle and subsection (c) of this section, the subsidy provided to each policyholder shall be:

(1) for medical professional liability insurance policies subject to rates that were approved for an initial effective date on or after January 1, 2005, but prior to January 1, 2006, the amount of a premium increase that is greater than 5% of the approved rates in effect 1 year prior to the effective date of the policy; [and]

(2) for medical professional liability insurance policies subject to rates that were approved for an initial effective date on or after January 1, 2006, a percentage of the policyholder's premium for the prior year that equals the quotient, measured as a percentage of the balance of the Rate Stabilization Account for the current calendar year divided by the aggregate amount of premiums for medical professional liability insurance that would have been paid by health care providers at the approved rate during the prior calendar year; **AND**

**(3) IN ADDITION TO AMOUNTS PROVIDED UNDER ITEMS (1) AND (2) OF THIS SUBSECTION, FOR MEDICAL PROFESSIONAL LIABILITY INSURANCE POLICIES ISSUED TO FAMILY PRACTITIONERS WHO HAVE STAFF PRIVILEGES AT GARRETT COUNTY MEMORIAL HOSPITAL AND WHO ALSO PROVIDE OBSTETRICAL SERVICES AT GARRETT COUNTY MEMORIAL HOSPITAL, AN AMOUNT EQUAL TO 75% OF THE DIFFERENCE BETWEEN THE POLICYHOLDER'S PREMIUM FOR CALENDAR YEAR 2007, 2008, AND 2009 AND THE PREMIUM THAT OTHERWISE WOULD BE PAYABLE IN THOSE CALENDAR YEARS IF THE POLICYHOLDER WAS NOT PROVIDING OBSTETRICAL SERVICES.**

(c) The State subsidy calculated under subsection (b) of this section may not include the amount of a rate increase resulting from a premium surcharge or the loss of a discount due to a health care provider's loss experience.

(d) A health care provider may elect not to receive a rate reduction, credit, or refund by:

(1) notifying the medical professional liability insurer within 15 days of receiving the notice under subsection (a) of this section of the health care provider's intent not to accept a rate reduction, credit, or refund; and

(2) paying, either in full, or on an installment basis, the amount of premium billed by the medical professional liability insurer.

(e) (1) On at least an annual basis, a medical professional liability insurer seeking reimbursement from the Rate Stabilization Account on behalf of health care providers shall apply to the Rate Stabilization Account on a form and in a manner approved by the Commissioner.

(2) The Commissioner may adopt regulations that specify the information that medical professional liability insurers shall submit to receive money from the Rate Stabilization Account.

(3) The information required shall include:

(i) by health care provider classification and geographic territory, the amount of the base premium rate charged by the insurer at the approved rate;

(ii) by health care provider classification and geographic territory, the amount of the base premium rate charged by the insurer reduced by the amount of the subsidy, **INCLUDING THE SUBSIDY PROVIDED UNDER SUBSECTION (B)(3) OF THIS SECTION, IF APPLICABLE;**

(iii) the number of health care providers in each classification and geographic territory;

(iv) the total amount of reimbursement requested from the Rate Stabilization Account;

(v) the name, classification, and geographic territory of each health care provider electing not to receive a rate reduction, credit, or refund; and

(vi) any other information the Commissioner considers necessary to disburse money from the Rate Stabilization Account.

(f) Within 60 days of receipt of a request for reimbursement from the Fund, the Commissioner shall disburse money from the Rate Stabilization Account on a quarterly basis to medical professional liability insurers to be used to provide a rate reduction, credit, or refund to health care providers.

(g) In anticipation of reimbursement or on reimbursement from the Rate Stabilization Account, a medical professional liability insurer shall provide a rate reduction, credit, or refund to a policyholder as follows:

(1) for premiums paid on an installment basis, the rate reduction or credit shall be applied against the base premium rate due on the next installment; and

(2) if the amount of the rate reduction or credit is more than the amount due on the next installment, or if a policy is paid in full, the policyholder may



elect that either a refund be issued, or that a credit be applied against the base premium rate due on the policyholder's next renewal.

(h) [During] **EXCEPT FOR THE SUBSIDY PROVIDED UNDER SUBSECTION (B)(3) OF THIS SECTION, DURING** the period in which disbursements are made from the Rate Stabilization Account to pay for health care provider rate reductions, credits, or refunds:

(1) a disbursement from the Rate Stabilization Account to a medical professional liability insurer conducting business as a mutual company shall be reduced by the value of a dividend that may be issued by the insurer; and

(2) a disbursement may not be made from the Rate Stabilization Account to the Medical Mutual Liability Insurance Society of Maryland during any period for which the Commissioner has determined, under § 24-212 of this article, that the surplus of the Society is excessive.

(i) The Commissioner or the Commissioner's designee shall conduct an annual audit to verify the information submitted by a medical professional liability insurer applying for reimbursement from the Rate Stabilization Account.

**SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect July 1, 2007. It shall remain effective for a period of 3 years and, at the end of June 30, 2010, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

**Approved by the Governor, April 24, 2007.**