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**MIA BULLETIN 05-8**

TO: Property and Casualty Insurance Companies Holding Certificates of Authority to Write Medical Professional Liability Insurance Business in Maryland

SUBJECT: Rate Stabilization Account – Fiscal Year 2005 Funding Allocation Methodology

DATE: May 20, 2005

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As noted in MIA Bulletin No. 05-7, Chapter 1, Laws of Maryland 2005 (Senate Bill 836) created the Maryland Health Care Provider Rate Stabilization Fund (the "Fund"),<sup>1</sup> which consists primarily of premium tax revenue collected from health maintenance organizations and managed care organizations.<sup>2</sup> The Fund is divided into three sub-funds: the Rate Stabilization Account (the "RS Account"); the Medical Assistance Program Account (the "Medicaid Account"); and "a third component consisting of funds that are not allocated to either the RS Account or the Medicaid Account."<sup>3</sup> Monies allocated to the RS Account are to be used to pay authorized medical professional liability insurance premium subsidies ("State Subsidies") to medical professional liability insurers who wish to participate in the Fund ("Participating Insurers") on behalf of policyholders who are eligible health care providers.<sup>4</sup>

Senate Bill 836, which became law on March 31, 2005, did not allocate any money from the Fund to the RS Account for State Fiscal Year 2005 (which runs from July 1, 2004 until June

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<sup>1</sup>The Fund replaced the Maryland Medical Professional Liability Insurance Rate Stabilization Fund that had been created by Chapter 5, Laws of Maryland 2004 (Special Session).

<sup>2</sup>Senate Bill 836 is codified at Annotated Code of Maryland, Insurance Article ("IN") §19-801 *et seq.*

<sup>3</sup>Letter of May 10, 2005 to the Honorable Alfred W. Redmer, Jr. from Robert N. McDonald, Chief Counsel, Advice and Opinions, Office of the Attorney General (hereinafter the "McDonald Letter") at 2.

<sup>4</sup> Subsidies are available only to licensed physicians and certified midwives. Subsidies are not available to corporate entities through which they practice or to other health care providers.

30, 2005).<sup>5</sup> The first statutory allocation to the RS Account is in Fiscal Year 2006, which begins on July 1, 2005.<sup>6</sup>

On April 28, 2005, in response to inquiries, the Maryland Insurance Administration (the “MIA”) asked the Office of the Attorney General whether premium tax revenues could be advanced to the RS Account in Fiscal Year 2005. On May 10, 2005, the Office responded that a budget amendment could be approved to *accelerate* the schedule of payments of money from the Fund to the RS Account, provided that the advance did not effect a reallocation of monies between the RS Account and the Medicaid Account. McDonald Letter at 7-9. In other words, the anticipated unallocated balance of the Fund for Fiscal Year 2005 may be advanced to the RS Account via an amendment to the Fiscal Year 2005 budget, *if* the amount so advanced is subtracted from the amount allocated by statute to the RS Account for Fiscal Year 2006.

In light of that response, the Governor has approved a budget amendment that will, in fact, advance money to the RS Account in Fiscal Year 2005. This Bulletin is intended to provide Participating Insurers with information identifying the amount of money that is available for disbursement from the RS Account in Fiscal Year 2005, the State Subsidies that are eligible for disbursement prior to June 30, 2005, and how funds available for disbursement will be allocated among insurers that are entitled to participate in the Fund. The precise amount that any Participating Insurer will receive from the RS Account and the date on which that amount will be disbursed will be communicated directly to that Participating Insurer in response to the Rate Stabilization Account Reimbursement Form filed by that Participating Insurer.<sup>7</sup>

**The Aggregate Amount of State Funds Available for Disbursement from the RS Account in Fiscal Years 2005**

The MIA received approximately \$12.8 million in estimated premium tax payments from health maintenance organizations (“HMOs”) for the first quarter of 2005. Managed care organizations

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<sup>5</sup>The statute allocates \$3.5 million from the Fund to the Medicaid Account for State Fiscal Year 2005. The remainder of premium tax revenue collected in Fiscal Year 2005 becomes part of the unallocated balance of the Fund. The unallocated balance at the end of Fiscal Year 2005, together with new revenues received during Fiscal Year 2006, are to be allocated to both the RS Account and the Medicaid Account in Fiscal Year 2006. Specifically, the statute directs that, in Fiscal Year 2006, \$52,000,000 is to be allocated to the RS Account for State Subsidies payable in calendar year 2005. See McDonald Letter at 5.

<sup>6</sup>Because Senate Bill 836 did not direct the payment of any money into the RS Account until July 1, 2005, the statute, as passed by the legislature, did not contemplate or provide for the payment of any State Subsidies to Participating Insurers from the RS Account until July 1, 2005. Rather, the statute, as passed, authorized Participating Insurers to *advance* refunds and credits to eligible health care providers and to seek reimbursement from the RS Account as funds became available within that Account.

<sup>7</sup>Information and instructions relating to the Rate Stabilization Account Reimbursement Form is set forth in MIA Bulletin 05-7.

("MCOs") did not become subject to premium tax until April 1, 2005 and, thus, were not required to make the April, 2005 estimated payment. Working with revenue estimates for the June 15 collection, which will include estimated tax payments by MCOs, the MIA projects that the Fund will receive approximately \$31 million in revenue in Fiscal Year 2005. Of that amount, \$3.5 million is allocated to the Medicaid Account, leaving an unallocated balance in Fiscal Year 2005 of approximately \$27.5 million.

The Governor has approved budget amendments appropriating \$27.5 million to the RS Account in Fiscal Year 2005.<sup>8</sup> Hence, \$27.5 million is available in Fiscal Year 2005 to disburse to eligible insurers.<sup>9</sup>

**The Amount of Approved Reimbursements That Participating Insurers are Eligible to Receive as Disbursements from the RS Account in Fiscal Years 2005 for Eligible Policies issued in Calendar Year 2005**

IN § 19-805(f) provides:

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 a policyholder . . . .

Most eligible health care providers pay professional liability insurance premium on a quarterly installment basis. The MIA believes that the directive to pay disbursements from the RS Account on a quarterly basis was intended to assure that the subsidized portion of premium is disbursed as the premium to be subsidized becomes due over the course of the policy year. In this way, the legislature requires the State to pay its pro-rata share of premium increases as those increases become payable by eligible policyholders, while also assuring that State dollars are not advanced to Participating Insurers prematurely but, rather, remain in State accounts where all investment experience will inure to the benefit of the State.<sup>10</sup>

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<sup>8</sup> The Governor has also approved a budget amendment appropriating \$24.5 million to the RS Account in Fiscal Year 2006, thus an additional \$24.5 million will become available on July 1, 2005 (the beginning of Fiscal Year 2006) to pay approved Reimbursement Requests.

<sup>9</sup> Although the State has not yet received premium tax revenue in those amounts, the State will make the full amount of the appropriations available to the RS Account from the effective date of the budget amendments.

<sup>10</sup> In addition, and from a practical standpoint, there is no other rational way to advance funds from the RS Account. Policies are issued, premiums are due, and the State Subsidies are payable on a calendar year basis. The allocations to the RS Account, however, are made on a Fiscal Year basis. For example, the allocation made for Fiscal Year 2007 (which begins on July 1, 2006) is made to pay State Subsidies that are paid in Calendar Year 2006 (which starts on January 1, 2006). There is no year in which the RS Account is in operation in which the RS Account is likely to have available, at the start of a calendar year, sums sufficient to advance the entire State Subsidy to all eligible

Based on its interpretation of the legislature's intent, and recognizing that physicians have already paid premiums subject to State Subsidy in Fiscal Year 2005, the MIA believes that Participating Insurers are eligible under the statutory language to receive the following distribution in Fiscal Year 2005:

- For Participating Insurers that renew policies on a single, common date in Fiscal Year 2005:
  - 100% of the subsidy amount attributable to 2005 policies on which the premium has been paid in full, *plus*
  - the amount of the subsidy attributable to premium billed on any periodic installment due on or before June 30, 2005.<sup>11</sup>
- For Participating Insurers that renew on a rolling basis:
  - 100% of the State Subsidy attributable to the premium billed on any eligible policy included in the Participating Provider's Rate Stabilization Account Reimbursement Form.

Participating Insurers who are seeking disbursements prior to June 30, 2005 may, but will not be required to, reduce their 2005 subsidy calculation to account for those eligible policyholders who have paid their premium in full, but have elected not to receive a refund and, instead, to receive a credit against their 2006 premium, as permitted by IN §19-805(g)(2). Those amounts must, however, be identified and the reimbursement subsidy request must be adjusted

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policyholders at the beginning of that calendar year. And, the McDonald Letter makes clear that the two-fold test that allowed a budget amendment to advance funds from the Fiscal Year 2006 allocation to the RS Account in Fiscal Year 2005, does not apply hereafter. Thus, there can be no advancement of funds from the Fiscal Year 2007 allocation in Fiscal Year 2006. The MIA assumes that the Legislature understood this when it funded calendar year payment obligations on a fiscal year basis and, thus, intended that the distributions of the payment obligations would be made periodically throughout the calendar year as funding became available.

<sup>11</sup> To the extent that a Participating Insurer that renews policies on a single, common date has submitted a request for Reimbursement that identifies 100% of the State Subsidy applicable to eligible policyholders that pay in quarterly installments, the MIA will distribute the percentage attributable to the installments paid or payable as of June 30, 2005 in Fiscal Year 2005 and will distribute the remainder in advance of the date of the remaining installment(s). Thus, for example, a carrier whose policies all renew on January 1 and whose policyholders were, or are, required to make installment payments on December 1, 2004 and March 1, June 1 and September 1, 2005 are eligible for immediate disbursement of 75% of the State Subsidy attributable to those policies renewing after January 1 and are eligible for disbursement of the remaining 25% prior to September 1.

before any post-July 1 distribution is made.

**Allocation of Available Funds Among Insurers Eligible to Participate in the Fund**

To the extent that the \$27.5 million that has been appropriated to the RS Account in Fiscal Year 2005 is not sufficient to pay the estimated disbursements that all eligible insurers would be eligible to receive from the Fund prior to July 1, 2005, the MIA will pro-rate the available funds among such eligible insurers in accordance with their market share.

Questions concerning this bulletin may be directed to Lester C. Schott, Associate Commissioner, Examination and Auditing, at 410-468-2119.

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Alfred W. Redmer, Jr.  
Insurance Commissioner