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ANTHONY G. BROWN
Lt. Governor



RALPH S. TYLER
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November 30, 2007

The Honorable Thomas V. Mike Miller, Jr.
Co-Chairman
Legislative Policy Committee
State House, H-107
Annapolis, MD 21401-1991

The Honorable Michael E. Busch
Co-Chairman
Legislative Policy Committee
State House, H-101
Annapolis, MD 21401-1991

Dear Co-Chairmen:

Attached is the Maryland Insurance Administration's Report on the Medical Professional Liability Insurance Rate Stabilization Subsidy for 2008.

The Report provides the subsidy factor for 2008, the subsidy available to each participating medical professional liability insurer, and the number of health care providers by classification and geographical territory eligible to receive a State Subsidy.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph S. Tyler".

Ralph S. Tyler
Insurance Commissioner

cc: Members, Legislative Policy Committee
Lynne Porter, Legislative Policy Committee Staff
Sarah T. Albert, Library Associate

**Maryland Insurance Administration's
Report on the Medical Professional
Liability Insurance Rate Stabilization
Subsidy for 2008**



November 30, 2007

Maryland Insurance Administration's Report on the Medical Professional Liability Insurance Rate Stabilization Subsidy for 2008

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1. Bulletin 07-16 Maryland Health Care Provider Rate Stabilization Fund Rate Stabilization Account – 2008 Subsidy Factor
2. 2008 Allocation Amount for Each Participating Insurer
3. Summary of Health Care Providers by Classification and Geographical Territory Eligible to Receive a Subsidy
4. MIA Case No. MIA-2007-09-025 - Final Order Concerning Insurance Commissioner for the State of Maryland v. Medical Mutual Liability Insurance Society of Maryland.

I. Introduction:

Chapter 1, Laws of Maryland 2005 (Senate Bill 836) created the Maryland Health Care Provider Rate Stabilization Fund, which consists primarily of premium tax revenue collected from health maintenance organizations and managed care organizations. The Fund is divided into three sub-funds: the Rate Stabilization Account, the Medical Assistance Program Account, and a third component consisting of funds that are not allocated to either the Rate Stabilization Account or the Medicaid Account.

Monies allocated to the Rate Stabilization 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.

State Subsidies are available only to licensed physicians and certified midwives. State Subsidies are not available to corporate entities through which they practice or to other health care providers.

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).

II. Annual Reporting:

§19-806 of the Insurance Article requires that on or before December 1 of each year from 2005 to 2007, the Commissioner shall report to the Legislative Policy Committee, in accordance with §2-1246 of the State Government Article, the following:

- 1) The subsidy factor for the following calendar year;
- 2) The money available to each medical professional liability insurer; and
- 3) The number of health care providers by classification and geographical territory eligible to receive a State Subsidy from the Rate Stabilization Account.

III. Subsidy Factor:

For policies with an effective date during calendar year (Subsidy Year) 2008, the State Subsidy is to be calculated as the policyholder's premium for the prior year times the *2008 Subsidy Factor*. Premium increases resulting from the imposition of a surcharge and/or the loss of a discount due to the policyholder's loss experience are not subsidized and are subtracted from the calculation of the premium before the State Subsidy is calculated.

In State fiscal year 2009, §19-803(b)(3) of the Insurance Article allocates \$25,000,000 to pay State Subsidies for Subsidy Year 2008. Pursuant to §19-803(d)(1) of the Insurance Article, the Commissioner may provide up to 5% of any year's allocation to pay State Subsidies for the policyholders of a medical professional liability insurer that did not earn premiums for coverage to health care providers in the previous calendar year in Maryland.

For policies with an effective date during Subsidy Year 2008, the State Subsidy provided is 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 (the "*2008 Subsidy Factor*").

Based upon the statutory allocation of funds for 2008 State Subsidies, divided by the aggregate amount of premiums for medical professional liability insurance that would have been paid by policyholders eligible for a State Subsidy at the approved rates during

the prior year, the Administration has determined the *2008 Subsidy Factor* to be **13%**.
The Bulletin issued by the Administration on the 2008 Subsidy factor can be found at
Exhibit 1.

IV. Subsidies Available to Each Medical Professional Liability Insurer:

Exhibit 2 illustrates for each medical professional liability insurer participating in the Rate Stabilization Fund during Subsidy Year 2007, the amount allocated for State Subsidies for Subsidy Year 2008. As previously noted, pursuant to §19-803(d)(1) of the Insurance Article, the Commissioner may provide up to 5% of any year's allocation to pay State Subsidies for the policyholders of a medical professional liability insurer that did not earn premiums for coverage to health care providers in the previous calendar year in Maryland. Accordingly, the Administration has allocated 5% of the total allocation to the Rate Stabilization Account for 2008 State Subsidies for future eligible policyholders of any new carrier. If additional carriers enter the Maryland market that were not writing medical professional liability insurance in Maryland in 2008, §19-803(d)(1) provides that funds allocated to current Participating Insurers may need to be reduced on a pro-rata basis.

V. Providers Eligible to Receive Subsidy

Exhibit 3 summarizes the number of health care providers by classification and geographical territory eligible to receive a State Subsidy from the Rate Stabilization Account in Subsidy Year 2008. This information was compiled from data received from the five insurance carriers participating in the Rate Stabilization Account in 2007.

Through September 11, 2007 the Medical Mutual Liability Insurance Society of Maryland (the Society) received reimbursement for State subsidies from the Rate Stabilization Account totaling \$72.4 million. On September 12, 2007 the Board of Directors of the Society declared a dividend in the amount of \$68.6 million. On the same date the Society, through counsel, advised the Maryland Insurance Administration that the Society had declared that dividend and how, in the Society's view, the dividend should be divided as between the State and the Society's current policyholders. The Society requested that it receive no additional reimbursements from the Rate Stabilization Account during 2007.

The Society noted that favorable loss experience in the past two years contributed significantly to the dividend. In light of this favorable loss experience, the Society also advised the Administration that it will not seek reimbursement from the Rate Stabilization Account for Subsidy Year 2008.

The Insurance Commissioner held a hearing on October 5, 2007 to review the Society's proposed distribution plan and to determine how, consistent with the applicable statutes, the dividend should be divided. In his Final Order in Case No. MIA-2007-09-025, attached as Exhibit 4, the Commissioner determined that in accordance with

applicable statutes the Society must pay the entire \$68.6 million dividend to the State, specifically to the Rate Stabilization Account. However, the Commissioner remained convinced that a better result can and should be achieved with the use of the surplus accumulated by the Society from the favorable loss experience. Accordingly, the payment to the State under this Order is not due until thirty days from the date of the Order.

The purpose of delaying the Society's payment obligation was to give the parties, particularly the Society, an opportunity to find an acceptable way to apply the \$68.6 million in dividend funds to support medical malpractice insurance rates in 2008. If an acceptable proposal is offered 30 days from the date of the Order, the Commissioner will consider rescinding the Order. Subsequent to the Order the Society has met with Administration officials and discussed various options. However as of the date of this Report, a final determination has not been reached by the Society on how to proceed, and their continued participation in the Rate Stabilization Fund remains uncertain.

MARTIN O'MALLEY
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MIA BULLETIN 07-16

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

SUBJECT: Maryland Health Care Provider Rate Stabilization Fund - Rate Stabilization Account - 2008 Subsidy Factor

DATE: October 12, 2007

MIA Bulletin 05-7, *Procedures for Obtaining Reimbursements from the Maryland Health Care Provider Rate Stabilization Fund - Rate Stabilization Account*, described in detail how Chapter 1, Laws of Maryland 2005 (Senate Bill 836) created the Maryland Health Care Provider Rate Stabilization Fund (the "Fund"), which consists primarily of premium tax revenue collected from health maintenance organizations and managed care organizations. 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.

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.

The purpose of this Bulletin is to advise participating insurers of the Subsidy available for Subsidy Year 2008¹. The procedures for calculating 2008 State Subsidies

¹ The term "Subsidy Year" is used to specify which policies issued by a Participating Insurer are eligible for specified State Subsidies. As an example, Subsidy Year 2008 refers to policies that, pursuant to §19-805(b)(2) of the Insurance Article, are subject to rates that were approved for an initial effective date on or after January 1, 2008, but prior to January 1, 2009. For a Participating Insurer that sought and obtained a rate increase on new and renewal business that became effective on January 1, 2008, Subsidy Year 2008 would run from January 1, 2008 through December 31, 2008. For a Participating Insurer that sought and obtained a rate increase on new and renewal business that became effective on April 1, 2008, Subsidy Year 2008 would run from April 1, 2008 through March 31, 2009.

and obtaining reimbursements from the Rate Stabilization Account will be addressed in a later bulletin.

For state fiscal year 2009, §19-803(b)(3) of the Insurance Article allocates \$25,000,000 to pay subsidies for calendar (subsidy) year 2008. Pursuant to §19-803(d)(1) of the Insurance Article, the Commissioner may provide up to 5% of any year's allocation to pay subsidies for the policyholders of a medical professional liability insurer that did not earn premiums for coverage to health care providers in the previous calendar year in Maryland.

For policies with an effective date during Subsidy Year 2008, the subsidy provided is 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 (the "2008 Subsidy Factor").

Based upon the statutory allocation of funds for 2008 subsidies, divided by the aggregate amount of premiums for medical professional liability insurance that would have been paid by policyholders eligible for a subsidy at the approved rates during the prior year, the Administration has determined the 2008 Subsidy Factor to be 13%.

For insurers writing medical professional liability insurance in Maryland in 2007, the 13% 2008 Subsidy Factor is to be used to determine the subsidy amount for each eligible health care provider. If additional carriers do enter the Maryland market, §19-803(d)(1) provides that funds allocated to current participating insurers may need to be reduced on a pro-rata basis.

Administration Contact

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

Signature on file with original document

Ralph S. Tyler
Insurance Commissioner

Maryland Insurance Administration
Rate Stabilization Account
2008 Allocation Amount for Each Participating Insurer

	2008 Allocation Amount
Medical Mutual Liability Insurance Society of Maryland	\$ 15,750,000
The Medical Assurance Company, Inc.	1,800,000
The Doctors Company, an Interinsurance Exchange	3,650,000
Medical Protective Company	1,650,000
Maryland Healthcare Providers Insurance Exchange	900,000
Subtotal - Current Participating Insurers	\$ 23,750,000
Allocation under §19-803(d)(1) of the Insurance Article (NOTE 1)	1,250,000
Total Subsidy Year 2008 Allocation	\$ 25,000,000

NOTE 1: Pursuant to §19-803(d)(1) of the Insurance Article, the Commissioner may provide up to 5% of any year's allocation to pay subsidies for the policyholders of a medical professional liability insurer that did not earn premiums for coverage to health care providers in the previous calendar year in Maryland. This amount represents a 5% allocation for a new carrier that may apply for a Certificate of Authority to write medical professional liability insurance in Maryland.

**Maryland Insurance Administration
Rate Stabilization Account**

Summary of Health Care Providers by Classification and Geographical Territory Eligible to Receive a Subsidy

CLASSIFICATION	TOTAL	MEDPRO	MEDICAL ASSURANCE	MDPHIX	DOCTORS COMPANY	MEDICAL MUTUAL
BALTIMORE CITY AND BALTIMORE COUNTY						
ALLERGY	19	0	0	0	1	18
ANESTHESIOLOGY	70	6	0	0	64	0
ANESTHESIOLOGY (INCLUDING OB)	117	0	0	0	0	117
ANESTHESIOLOGY (OTHER THAN OB)	29	0	0	0	0	29
ANESTHESIOLOGY PAIN ONLY	1	0	0	0	1	0
CARDIOLOGY	7	0	0	0	7	0
CARDIOVASCULAR DISEASE (MINOR SURGERY)	44	0	0	20	0	24
CARDIOVASCULAR DISEASE (NO SURGERY)	54	0	0	35	0	19
CLINIC GROUPS	4	0	0	0	0	4
DERMATOLOGY	6	0	0	0	6	0
DERMATOLOGY (MINOR SURGERY)	11	0	0	0	0	11
DERMATOLOGY (NO SURGERY)	28	0	1	0	0	27
EMERGENCY MEDICINE (NO MAJOR SURGERY)	0	0	0	0	0	0
EMERGENCY ROOM	2	0	0	0	0	2
ENDOCRINOLOGY (NO SURGERY)	21	2	0	4	10	5
FAMILY OR GENR'L PRACTICE (NO SURGERY)	123	7	3	0	11	102
FAMILY OR GENR'L PRACTICE-MINOR SURGERY	2	0	0	0	1	1
FORENSIC/LEGAL MEDICINE - EX PSYCHIATRY	2	0	0	0	0	2
GASTROENTEROLOGY	6	0	0	0	6	0
GASTROENTEROLOGY - MINOR SURGERY	51	0	0	0	0	51
GASTROENTEROLOGY - NO SURGERY	1	0	0	0	0	1
GENERAL MEDICINE	3	0	0	0	3	0
GENERAL PREVENTIVE MEDICINE NO SURGERY	3	0	0	0	0	3
GENERAL SURGERY	2	0	0	0	2	0
GENETICIST	1	0	0	0	0	1
GERIATRICS NO SURGERY	3	0	0	0	0	3
GYNECOLOGY	10	0	0	0	10	0
GYNECOLOGY MAJOR SURGERY	2	2	0	0	0	0
GYNECOLOGY (MINOR SURGERY)	18	0	0	0	0	18
GYNECOLOGY (NO SURGERY)	2	0	0	0	0	2
HAND & FOOT SURGERY	0	0	0	0	0	0
HEMATOLOGY	5	0	0	0	5	0
HEMATOLOGY - NO SURGERY	6	0	1	0	0	5
HEMATOLOGY-ONCOLOGY	1	0	1	0	0	0
HOSPITALIST/HOUSE STAFF	16	0	0	15	0	1
IM NO SURGERY	0	0	0	0	0	0
IM CARDIOLOGY MINOR SURGERY	2	0	2	0	0	0
IM CARDIOLOGY NO SURGERY	1	0	1	0	0	0
INFECTIOUS DISEASE NO SURGERY	9	0	0	1	0	8
INTENSIVE CARE MEDICINE	5	0	0	1	0	4
INTERNAL MEDICINE	52	0	0	0	52	0
INTERNAL MEDICINE - MINOR SURGERY	12	0	0	2	0	10
INTERNAL MEDICINE - NO SURGERY	437	11	9	6	0	411
MD CORPORATION	13	13	0	0	0	0
NEOPLASTIC DISEASES - NO SURGERY	11	0	0	5	0	6
NEOPLASTIC DISEASES - MINOR SURGERY	1	0	0	1	0	0
NEPHROLOGY - NO SURGERY	35	0	0	0	7	28
NEPHROLOGY - MINOR SURGERY	6	0	0	0	0	6
NEUROLOGY	2	0	0	0	2	0
NEUROLOGY INCLUDING CHILD - MINOR SURGERY	0	0	0	0	0	0
NEUROLOGY INCLUDING CHILD - NO SURGERY	52	1	0	6	0	45
NUCLEAR MEDICINE	6	0	0	0	2	4
NUTRITION	2	0	0	0	0	2
NURSE MIDWIVES	4	0	0	0	0	4
OBSTETRICS & GYNECOLOGY	12	0	0	0	12	0
OCCUPATIONAL MEDICINE	13	1	0	0	2	10
ONCOLOGY	7	0	0	0	6	1
OPHTHALMOLOGY MAJOR SURGERY	0	0	0	0	0	0
OPHTHALMOLOGY - MINOR SURGERY	11	0	0	0	11	0

**Maryland Insurance Administration
Rate Stabilization Account**

Summary of Health Care Providers by Classification and Geographical Territory Eligible to Receive a Subsidy

CLASSIFICATION	TOTAL	MEDPRO	MEDICAL ASSURANCE	MDPHIX	DOCTORS COMPANY	MEDICAL MUTUAL
OPHTHALMOLOGY - NO SURGERY	13	0	0	1	0	12
ORTHOPEDIC EXCL. BACK	41	37	0	0	4	0
OTOLARYNGOLOGY	1	0	0		1	0
OTORHINOLARYNGOLOGY MINOR SURGERY	1	0	0	0	0	1
OTORHINOLARYNGOLOGY NO SURGERY	5	0	0	0	0	5
PAIN MANAGEMENT	2	2	0	0	0	0
PATHOLOGY	13	0	0	0	13	0
PATHOLOGY (NO SURGERY)	37	0	0	0	0	37
PEDIATRICS	17	0	0	0	17	0
PEDIATRICS MINOR SURGERY	6	0	0	5	0	1
PEDIATRICS (NO SURGERY)	159	6	4	12	0	137
PHYSIATRY/PHYS MED & REHAB	14	0	0	8	6	0
PHYSIATRY	3	2	1	0	0	0
PHYSIATRY/PHYS MED & REHAB/ACUPUNCTURE	27	0	0	0	0	27
PHYSICAL MEDICINE & REHAB	5	0	0	0	0	5
PHYSICIANS - N.O.C. - MINOR SURGERY	19	2	0	0	0	17
PHYSICIANS - N.O.C. - NO SURGERY	37	3	0	0	0	34
PSYCHIATRY - INCLUDING CHILD	75	0	0	6	8	61
PSYCHOANALYSIS	1	0	0	0	0	1
PUBLIC HEALTH	2	0	0	0	0	2
PULMONARY DISEASES - MINOR SURGERY	12	0	0	0	0	12
PULMONARY DISEASES - NO SURGERY	2	0	0	0	0	2
PULMONARY MEDICINE	33	0	0	0	33	0
RADIOLOGY	0	0	0	0	0	0
RADIOLOGY - THERAPEUTIC	1	0	0	0	1	0
RADIOLOGY - DIAGNOSTIC - MINOR SURGERY	27	0	0	2	0	25
RADIOLOGY - DIAGNOSTIC - NO SURGERY	13	0	4	0	0	9
RADIOLOGY INCL IVP	104	0	104	0	0	0
RHEUMATOLOGY	15	0	2	0	7	6
RHEUMATOLOGY - NO SURGERY	1	1	0	0	0	0
SHOCK THERAPY NOC	0	0	0	0	0	0
SURGEON - ABDOMINAL	1	0	0	0	0	1
SURGEON - CARDIAC	8	0	0	4	0	4
SURGEON - CARDIOVASCULAR	2	0	0	0	0	2
SURGEON - COLON AND RECTAL	9	0	0	0	0	9
SURGEON - EMERGENCY MEDICINE	1	0	0	0	0	1
SURGEON - FAMILY OR GENERAL PRACTICE	1	1	0	0	0	0
SURGEON - GENERAL - N.O.C.	52	9	1	9	0	33
SURGEON - GYNECOLOGY - FERTILITY/NO OB	32	0	1	1	0	30
SURGEON - HAND	11	0	0	0	9	2
SURGEON - NEOPLASTIC DISEASES	2	0	0	2	0	0
SURGEON - NEUROLOGY (INCLUDING CHILD)	26	0	0	4	0	22
SURGEON - OBSTETRICS & GYNECOLOGY	54	8	0	9	0	37
SURGEON - OPHTHALMOLOGY	86	5	5	8	0	68
SURGEON - ORTHOPEDIC	62	9	1	11	0	41
SURGEON - OTORHINOLARYNGOLOGY	27	0	0	0	0	27
SURGEON - OTORHINOLARYNGOLOGY - PLASTIC	8	0	0	0	0	8
SURGEON - PLASTIC	43	0	0	1	8	34
SURGEON - THORACIC	10	0	0	2	1	7
SURGEON - UROLOGICAL	9	0	0	1	0	8
SURGEON - VASCULAR	24	1	0	1	0	22
SURGICAL SPECIALTY	3	0	0	0	3	0
SUSPENSION (1B)	4	0	0	0	0	4
UROLOGY	47	0	0	0	47	0
VICARIOUS CHARGE UNDER INDIVIDUAL DOCTOR	10	0	0	0	0	10
TOTAL, BALTIMORE CITY AND BALTIMORE COUNTY	2,582	130	141	183	379	1,749

**Maryland Insurance Administration
Rate Stabilization Account**

Summary of Health Care Providers by Classification and Geographical Territory Eligible to Receive a Subsidy

CLASSIFICATION	TOTAL	MEDPRO	MEDICAL ASSURANCE	MDPHIX	DOCTORS COMPANY	MEDICAL MUTUAL
MONTGOMERY, PRINCE GEORGES, HOWARD, AND ANNE ARUNDEL COUNTIES						
ALLERGY	43	0	2	0	8	33
ANESTHESIOLOGY	60	31	1	0	28	0
ANESTHESIOLOGY (INCLUDING OB)	104	0	0	0	0	104
ANESTHESIOLOGY (OTHER THAN OB)	26	0	0	0	0	26
CARDIOLOGY	27	0	4	0	23	0
CARDIOVASCULAR DISEASE (MINOR SURGERY)	101	0	2	0	0	99
CARDIOVASCULAR DISEASE (NO SURGERY)	48	1	0	0	0	47
CLINIC GROUPS	23	0	0	0	0	23
DERMATOLOGY	4	0	0	0	4	0
DERMATOLOGY (MINOR SURGERY)	46	0	5	0	0	41
DERMATOLOGY (NO SURGERY)	67	4	8	0	0	55
EMERGENCY MEDICINE (NO MAJOR SURGERY)	0	0	0	0	0	0
EMERGENCY ROOM	12	0	0	0	0	12
ENDOCRINOLOGY (NO SURGERY)	28	2	0	0	0	26
FAMILY OR GENR'L PRACTICE (NO SURGERY)	351	7	18	2	18	306
FAMILY OR GENR'L PRACTICE-MINOR SURGERY	10	0	1	0	4	5
FORENSIC/LEGAL MEDICINE - EX PSYCHIATRY	1	0	0	0	0	1
GASTROENTEROLOGY	10	0	0	0	10	0
GASTROENTEROLOGY - MINOR SURGERY	98	0	23	0	0	75
GASTROENTEROLOGY - NO SURGERY	3	0	0	0	0	3
GENERAL MEDICINE	2	0	0	0	2	0
GENERAL PRACTICE NO SURGERY	11	0	11	0	0	0
GENERAL PREVENTIVE MEDICINE NO SURGERY	2	0	0	0	0	2
GENERAL SURGERY	1	0	0	0	1	0
GENERAL SURGERY MINOR SURGERY	0	0	0	0	0	0
GENETICIST	1	0	0	0	0	1
GERIATRICS NO SURGERY	3	0	0	0	0	3
GYNECOLOGY	7	0	0	0	7	0
GYNECOLOGY MAJOR SURGERY	0	0	0	0	0	0
GYNECOLOGY (MINOR SURGERY)	36	0	3	0	0	33
GYNECOLOGY (NO SURGERY)	19	0	4	0	0	15
HEMATOLOGY	1	0	0	0	1	0
HEMATOLOGY - NO SURGERY	27	1	0	0	0	26
HOSPITALIST/HOUSE STAFF	39	0	0	0	0	39
IM NO SURGERY	0	0	0	0	0	0
IM ALLERGY NO SURGERY	1	0	1	0	0	0
IM CARDIOLOGY MINOR SURGERY	10	0	10	0	0	0
IM CARDIOLOGY NO SURGERY	3	0	3	0	0	0
IM ENDOCRIN NO SURGERY	2	0	2	0	0	0
IM NEPHROLOGY NO SURGERY	4	0	4	0	0	0
IM ONCOLOGY NO SURGERY	8	0	8	0	0	0
IM PULMONARY MINOR SURGERY	1	0	1	0	0	0
IM PULMONARY NO SURGERY	4	0	4	0	0	0
IM RHEUMATOLOGY NO SURGERY	3	0	3	0	0	0
INFECTIOUS DISEASE	1	0	0	0	1	0
INFECTIOUS DISEASE NO SURGERY	14	0	2	0	0	12
INTENSIVE CARE MEDICINE	46	9	13	0	0	24
INTERNAL MEDICINE	48	0	0	0	48	0
INTERNAL MEDICINE - MINOR SURGERY	49	0	1	1	0	47
INTERNAL MEDICINE - NO SURGERY	655	5	51	10	0	589
MD CORPORATION	21	21	0	0	0	0
NEOPLASTIC DISEASES - MINOR SURGERY	2	0	0	0	0	2
NEOPLASTIC DISEASES - NO SURGERY	6	0	0	0	0	6
NEPHROLOGY - NO SURGERY	17	0	0	0	0	17
NEUROLOGY - MINOR SURGERY	3	0	0	0	2	1
NEUROLOGY INCLUDING CHILD - MINOR SURGERY	2	0	0	0	0	2
NEUROLOGY INCLUDING CHILD - NO SURGERY	88	0	4	1	0	83
NEUROSURGERY	5	0	0	0	5	0
NUCLEAR MEDICINE	3	0	0	0	0	3

**Maryland Insurance Administration
Rate Stabilization Account**

Summary of Health Care Providers by Classification and Geographical Territory Eligible to Receive a Subsidy

CLASSIFICATION	TOTAL	MEDPRO	MEDICAL ASSURANCE	MDPHIX	DOCTORS COMPANY	MEDICAL MUTUAL
NUTRITION	0	0	0	0	0	0
NURSE MIDWIVES	3	0	2	0	0	1
OBSTETRICS & GYNECOLOGY	37	0	0	0	37	0
OCCUPATIONAL MEDICINE	15	1	4	0	3	7
ONCOLOGY	0	0	0	0	0	0
OPHTHALMOLOGY MAJOR SURGERY	3	0	0	0	3	0
OPHTHALMOLOGY - MINOR SURGERY	6	0	0	0	0	6
OPHTHALMOLOGY - NO SURGERY	16	1	1	0	0	14
ORTHOPEDIC EXCL. BACK	17	16	1	0	0	0
OTOLARYNGOLOGY	2	0	0	0	2	0
OTORHINOLARYNGOLOGY MAJOR SURGERY	1	0	1	0	0	0
OTORHINOLARYNGOLOGY - NO SURGERY	4	0	0	0	0	4
PAIN MANAGEMENT	1	0	1	0	0	0
PATHOLOGY	12	0	0	12	0	0
PATHOLOGY (NO SURGERY)	55	0	9	0	0	46
PEDIATRICS	7	0	0	0	7	0
PEDIATRICS MINOR SURGERY	14	0	6	0	0	8
PEDIATRICS (NO SURGERY)	415	14	23	0	0	378
PHARMACOLOGY CLINICAL	1	0	0	0	0	1
PHYSIATRY/PHYS MED & REHAB	30	0	0	0	0	30
PHYSIATRY	5	0	5	0	0	0
PHYSIATRY/PHYS MED & REHAB/ACUPUNCTURE	12	0	0	0	0	12
PHYSICAL MEDICINE & REHAB	9	0	0	0	9	0
PHYSICIANS - N.O.C. - MINOR SURGERY	31	0	0	0	0	31
PHYSICIANS - N.O.C. - NO SURGERY	23	1	0	0	0	22
PSYCHIATRY - INCLUDING CHILD	61	2	0	0	0	59
PSYCHIATRY	23	0	20	0	3	0
PSYCHOTHERAPY	0	0	0	0	0	0
PSYCHOSOMATIC MEDICINE	0	0	0	0	0	0
PULMONARY DISEASES - MINOR SURGERY	12	0	0	0	0	12
PULMONARY DISEASES - NO SURGERY	7	0	0	0	0	7
PULMONARY MEDICINE	16	0	0	0	16	0
RADIATION THERAPY- NOC	0	0	0	0	0	0
RADIOLOGY - DIAGNOSTIC	27	0	27	0	0	0
RADIOLOGY - DIAGNOSTIC - MINOR SURGERY	70	0	0	0	0	70
RADIOLOGY - DIAGNOSTIC - NO SURGERY	58	1	0	0	5	52
RADIOLOGY INCL IVP	59	0	59	0	0	0
RHEUMATOLOGY	8	0	2	0	6	0
RHEUMATOLOGY - NO SURGERY	21	0	0	0	0	21
SURGEON - ABDOMINAL	0	0	0	0	0	0
SURGEON - CARDIAC	2	0	0	0	0	2
SURGEON - CARDIOVASCULAR	7	0	0	0	0	7
SURGEON - COLON AND RECTAL	5	0	0	0	0	5
SURGEON - FAMILY OR GENERAL PRACTICE	1	0	1	0	0	0
SURGEON - GASTROENTEROLOGY	3	0	0	0	0	3
SURGEON - GENERAL - N.O.C.	63	5	12	4	0	42
SURGEON - GYNECOLOGY - FERTILITY/NO OB	44	0	6	0	0	38
SURGEON - HAND	1	0	0	0	0	1
SURGEON - NEUROLOGY (INCLUDING CHILD)	15	0	2	4	0	9
SURGEON - OBSTETRICS & GYNECOLOGY	139	35	14	0	0	90
SURGEON - OPTHALMOLOGY	109	7	9	0	0	93
SURGEON - ORTHOPEDIC	134	0	0	0	1	133
SURGEON - OTORHINOLARYNGOLOGY	53	0	0	0	0	53
SURGEON - OTORHINOLARYNGOLOGY - PLASTIC	13	0	0	0	0	13
SURGEON - PLASTIC	64	0	0	1	13	50
SURGEON - SPECIALTY	7	0	0	0	1	6
SURGEON - THORACIC	4	0	0	0	0	4
SURGEON - TRAUMATIC	46	4	0	0	0	42
SURGEON - UROLOGICAL	33	1	1	1	0	30
SURGEON - VASCULAR	3	0	1	0	0	2
SUSPENSION (IB)	4	0	0	0	0	4
THORACIC CONSULTATION	0	0	0	0	0	0
URGENT CARE MEDICINE/NO HOSP. ER	8	0	0	0	0	8

**Maryland Insurance Administration
Rate Stabilization Account**

Summary of Health Care Providers by Classification and Geographical Territory Eligible to Receive a Subsidy

CLASSIFICATION	TOTAL	MEDPRO	MEDICAL ASSURANCE	MDPHIX	DOCTORS COMPANY	MEDICAL MUTUAL
UROLOGY	13	0	0	0	13	0
VICARIOUS CHARGE UNDER INDIVIDUAL DOCTOR	38	0	0	0	0	38
TOTAL, MONTGOMERY, PRINCE GEORGES, HOWARD, AND ANNE ARUNDEL COUNTIES	4,097	169	396	24	293	3,215

**Maryland Insurance Administration
Rate Stabilization Account**

Summary of Health Care Providers by Classification and Geographical Territory Eligible to Receive a Subsidy

CLASSIFICATION	TOTAL	MEDPRO	MEDICAL ASSURANCE	MDPHIX	DOCTORS COMPANY	MEDICAL MUTUAL
REMAINDER OF STATE						
ALLERGY	14	2	3	0	1	8
ANESTHESIOLOGY	15	8	4	0	3	0
ANESTHESIOLOGY (INCLUDING OB)	90	0	0	0	0	90
ANESTHESIOLOGY (OTHER THAN OB)	9	0	0	0	0	9
CARDIOLOGY	3	1	0	0	2	0
CARDIOVASCULAR DISEASE (MINOR SURGERY)	53	0	0	1	0	52
CARDIOVASCULAR DISEASE (NO SURGERY)	34	0	0	11	0	23
CLINIC GROUPS	14	0	0	0	0	14
DENTAL LOCAL ANESTHESIOLOGY	0	0	0	0	0	0
DERMATOLOGY (MINOR SURGERY)	14	2	0	0	0	12
DERMATOLOGY (NO SURGERY)	26	0	1	0	1	24
EMERGENCY MEDICINE (NO MAJOR SURGERY)	29	0	0	0	0	29
EMERGENCY ROOM	4	0	0	0	0	4
ENDOCRINOLOGY	1	0	0	0	1	0
ENDOCRINOLOGY (NO SURGERY)	8	3	0	0	0	5
FAMILY OR GENR'L PRACTICE (NO SURGERY)	288	3	2	0	14	269
FAMILY OR GENR'L PRACTICE-MINOR SURGERY	20	0	1	0	12	7
GASTROENTEROLOGY	3	0	0	0	3	0
GASTROENTEROLOGY - MINOR SURGERY	39	2	0	0	0	37
GASTROENTEROLOGY - NO SURGERY	3	0	0	0	0	3
GENERAL MEDICINE	0	0	0	0	0	0
GENERAL PRACTICE NO SURGERY	0	0	0	0	0	0
GENERAL SURGERY	13	0	0	0	13	0
GYNECOLOGY	1	0	0	0	1	0
GYNECOLOGY MAJOR SURGERY	0	0	0	0	0	0
GYNECOLOGY (MINOR SURGERY)	10	0	0	0	0	10
GYNECOLOGY (NO SURGERY)	3	0	0	0	0	3
HEMATOLOGY	0	0	0	0	0	0
HEMATOLOGY - NO SURGERY	12	2	0	0	0	10
HOSPITALIST/HOUSE STAFF	9	0	0	0	0	9
IM MINOR SURGERY	0	0	0	0	0	0
IM NO SURGERY	0	0	0	0	0	0
IM INFECTIOUS DISEASE NO SURGERY	6	0	2	0	0	4
INTENSIVE CARE MEDICINE	8	0	0	0	0	8
INTERNAL MEDICINE	50	0	0	0	50	0
INTERNAL MEDICINE - MINOR SURGERY	33	0	5	0	0	28
INTERNAL MEDICINE - NO SURGERY	267	3	7	0	0	257
MD CORPORATION	4	4	0	0	0	0
NEOPLASTIC DISEASES - MINOR SURGERY	4	0	0	0	0	4
NEOPLASTIC DISEASES - NO SURGERY	5	0	0	0	0	5
NEPHROLOGY - MINOR SURGERY	1	0	0	0	0	1
NEPHROLOGY - NO SURGERY	19	0	0	0	0	19
NEUROLOGY INCLUDE CHILD - MINOR SURGERY	1	0	0	0	0	1
NEUROLOGY INCLUDING CHILD - NO SURGERY	38	1	2	0	0	35
NUCLEAR MEDICINE	1	0	0	0	0	1
NURSE MIDWIVES	7	0	0	0	1	6
OBSTETRICS & GYNECOLOGY	11	0	0	0	11	0
OCCUPATIONAL MEDICINE	4	0	1	0	1	2
ONCOLOGY	8	0	0	0	8	0
OPHTHALMOLOGY MAJOR SURGERY	11	0	0	0	8	3
OPHTHALMOLOGY - NO SURGERY	2	0	0	0	0	2
ORTHOPEDIC	1	1	0	0	0	0
ORTHOPEDIC EXCL. BACK	13	13	0	0	0	0
OTOLARYNGOLOGY	3	0	0	0	3	0
OTORHINOLARYNGOLOGY	0	0	0	0	0	0
PATHOLOGY	11	1	0	0	11	0
PATHOLOGY (NO SURGERY)	20	0	0	0	0	20
PEDIATRICS	13	0	0	0	11	2
PEDIATRICS (NO SURGERY)	198	5	3	0	0	190

**Maryland Insurance Administration
Rate Stabilization Account**

Summary of Health Care Providers by Classification and Geographical Territory Eligible to Receive a Subsidy

CLASSIFICATION	TOTAL	MEDPRO	MEDICAL ASSURANCE	MDPHIX	DOCTORS COMPANY	MEDICAL MUTUAL
PHYSIATRY/PHYS MED & REHAB	13	1	0	0	0	12
PHYSIATRY	1	0	0	0	1	0
PHYSIATRY/PHYS MED & REHAB/ACUPUNCTURE	2	0	0	0	0	2
PHYSICAL MEDICINE & REHAB	4	0	0	0	4	0
PHYSICIANS - N.O.C. - MINOR SURGERY	16	0	0	0	0	16
PHYSICIANS - N.O.C. - NO SURGERY	5	1	0	0	0	4
PSYCHIATRISTS - EXTENDED	0	0	0	0	0	0
PSYCHIATRY - INCLUDING CHILD	35	1	0	1	0	33
PUBLIC HEALTH	4	0	0	0	0	4
PULMONARY DISEASES	6	0	1	0	5	0
PULMONARY DISEASES - MINOR SURGERY	13	0	2	0	0	11
PULMONARY DISEASES - NO SURGERY	6	0	0	0	0	6
RADIOLOGY - DIAGNOSTIC - MINOR SURGERY	67	1	0	0	0	66
RADIOLOGY - DIAGNOSTIC - NO SURGERY	17	0	1	0	1	15
RHEUMATOLOGY - MINOR SURGERY	1	0	0	0	0	1
RHEUMATOLOGY - NO SURGERY	11	1	0	0	0	10
SURGEON - ABDOMINAL	2	0	0	0	0	2
SURGEON - COLON AND RECTAL	1	0	0	0	0	1
SURGEON - GASTROENTEROLOGY	1	0	0	0	0	1
SURGEON - GENERAL - N.O.C.	56	5	0	0	0	51
SURGEON - GYNECOLOGY - FERTILITY/NO OB	24	0	1	0	0	23
SURGEON - HAND	2	1	0	0	1	0
SURGEON - NEUROLOGY (INCLUDING CHILD)	14	0	0	0	0	14
SURGEON - OBSTETRICS & GYNECOLOGY	65	9	0	0	0	56
SURGEON - OPHTHALMOLOGY	40	0	0	0	0	40
SURGEON - ORTHOPEDIC	69	0	2	1	19	47
SURGEON - OTORHINOLARYNGOLOGY	25	0	0	0	0	25
SURGEON - OTORHINOLARYNGOLOGY - PLASTIC	2	0	0	0	0	2
SURGEON - PLASTIC	24	0	0	0	8	16
SURGEON - THORACIC	9	0	2	0	0	7
SURGEON - UROLOGICAL	30	1	0	0	0	29
SURGEON - VASCULAR	16	0	0	0	0	16
SURGICAL SPECIALTY	1	0	0	0	1	0
SURGERY HAND & FOOT	0	0	0	0	0	0
SUSPENSION (1B)	1	0	0	0	0	1
URGENT CARE MEDICINE/NO HOSP. ER	2	0	0	0	0	2
UROLOGY	11	0	0	0	3	8
VICARIOUS CHARGE UNDER INDIVIDUAL DOCTOR	15	0	0	0	0	15
TOTAL, REMAINDER OF STATE	2,066	72	40	14	198	1,742
GRAND TOTAL	8,745	371	577	221	870	6,706

MEDPRO - Medical Protective Company

MEDICAL ASSURANCE - The Medical Assurance Company, Inc.

MDPHIX - Maryland Healthcare Providers Insurance Exchange

DOCTORS COMPANY - The Doctors Company, an Interinsurance Exchange

MEDICAL MUTUAL - Medical Mutual Liability Insurance Society of Maryland

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



RALPH S. TYLER
Commissioner

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November 20, 2007

HAND DELIVERY

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Dear Counsel:

Enclosed is the Final Order concerning *Insurance Commissioner for the State of Maryland v. Medical Mutual Liability Insurance Society of Maryland*, MIA Case No. MIA-2007-09-025. A party to this hearing who is aggrieved by the Insurance Commissioner's decision may file an appeal in a Maryland Circuit Court within (30) days of the date of this letter.

Please also be aware that your appeal will not stay (or stop) the Commissioner's Order from taking effect. You must request the circuit court to enter a stay. Your request must be in writing and filed with the court in the form of a motion. It is up to the circuit court to decide whether or not to grant your motion.

If you have any other questions, please feel free to call me.

Sincerely,

Megan Hayes
Appeals Clerk

Enclosure

cc: Ralph S. Tyler, Commissioner
J. Van Lear Dorsey, Principal Counsel
Lester Schott, Associate Commissioner, Examination & Auditing
P. Randi Johnson, Associate Commissioner, Property & Casualty
Karen Barrow, Assistant Director of Public Affairs

INSURANCE COMMISSIONER
FOR THE STATE OF MARYLAND

* MARYLAND INSURANCE
ADMINISTRATION

v.

MEDICAL MUTUAL LIABILITY
INSURANCE SOCIETY OF MARYLAND

* CASE NO: MIA-2007-09-025

* * * * *

FINAL ORDER

This case began when, on September 12, 2007, the Board of Directors of Medical Mutual Liability Insurance Society of Maryland (the "Society") declared a dividend in the amount of \$68.6 million. On September 12, 2007, the Society, through counsel, advised the Maryland Insurance Administration ("MIA") that the Society had declared that dividend and the Society further advised how, in the Society's view, the dividend should be divided as between the State and the Society's current policyholders. On September 13, 2007, in response to being advised of the Society's actions and intentions, I issued an Order barring the Society from distributing the dividend and a Notice of Hearing scheduling a hearing to review the Society's proposed dividend distribution plan and to determine how, consistent with the applicable statutes, the dividend should be divided.

Pursuant to the Notice of Hearing, a hearing was held on October 5, 2007. At that hearing, Dr. Carol Ritter was permitted to intervene as a party and testimony was received from two MIA witnesses (Associate Commissioners Johnson and Schott), from a witness on behalf of the Society (Executive Vice President Poole), and from Dr. Ritter. In addition, the MIA submitted 25 exhibits (plus certain confidential commercial information filed and accepted under seal), all of which were admitted without objection. The Society submitted the pre-filed testimony of its Executive Vice President, Mr. Poole, and that testimony was received without objection. The parties filed post-hearing legal memoranda on October 19, 2007, and on October 26, 2007, a further hearing, limited to the arguments of counsel, was held.

The material facts of this matter are undisputed. There is no dispute that the Society has participated in the medical malpractice insurance premium subsidy program; nor is there any dispute that the Society has received approximately \$72.4 million in premium subsidy payments; it is also undisputed that the Society has declared a \$68.6 million dividend; and finally, all agree that the Society proposes to allocate (divide) the \$68.6 million dividends by paying approximately two-thirds of it to the State and distributing the balance to the Society's current policyholders. Dr. Ritter supports the Society's proposed allocation, although she testified with considerable eloquence as to the limited effectiveness of the Society's approach. The MIA disputes the Society's interpretation of the applicable statutes and argues that the Society owes the entire dividend to the State. The dispositive legal question, as to which the parties are in sharp dispute, is one of statutory interpretation to determine the proper allocation of the dividend as between the State and the Society's current policyholders.

The Maryland General Assembly adopted the medical malpractice insurance premium subsidy program in 2005 as part of an overall strategy to address concerns about rising medical malpractice insurance rates and the impact of those rising rates on the availability of patient care, particularly the impact of rising rates on the number of medical practitioners in certain specialties. The reforms enacted by the General Assembly, no doubt aided by favorable cyclical market trends, have resulted in stabilizing medical malpractice insurance premium rates. It is undisputed that the Society has no intention to raise its rates in 2008 irrespective of the outcome of this case.

It is good news for the Society's policyholders that the Society will not be raising its rates in 2008. Nevertheless, the testimony at the hearing indicates that the Society has failed to act in a manner consistent with obtaining maximum benefit for its policyholders, who are also its stockholders. For example, even though the premium subsidy program continues in 2008, the Society has elected not to participate in 2008, and thereby the Society has elected to deny its policyholders (doctors) an otherwise available means to reduce their malpractice insurance costs in 2008. The Society was unable to provide a persuasive explanation for its odd decision. Further, and of direct

relevance to this case, the Society elected to issue a \$68.6 million dividend, two-thirds of which even by the Society's calculation will go to the State, rather than using the dividend funds to support (reduce) rates in 2008. At the hearing on October 26, 2007, the Society conceded that it never made a calculation of how much it could reduce its rates were it to apply the funds it proposes to pay as a dividend to support rates.

At various points, the Society took the position that it was somehow precluded from using the dividend funds to support rates. As the case progressed, the Society retreated from that absolute position. In fact, the Society acknowledges that it "chose voluntarily to use a portion of its income in 2007 to fund the premium subsidy for 2007," see Society's post-hearing memorandum at 13, n. 18 (emphasis added), and plainly this use of income (surplus) supported (effectively reduced) rates in 2007. There is, however, no need to decide whether the Society would have been barred from using the dividend funds to support rates because the Society never attempted to do so, nor did it seek the MIA's approval to do so. The MIA, because of its comprehensive regulatory responsibilities in the area of insurance and specifically because of its role in connection with the malpractice insurance premium subsidy program, should have been consulted before the Society decided to declare a dividend. Presenting the MIA with a completed corporate action, as the Society did, is plainly not consultation, nor, as this case demonstrates, is it an approach that serves the best interests of the Society's policyholders.

The MIA is currently reviewing the Society's rates for 2008. That review will determine if the Society's 2008 rates are appropriate. Assuming for present purposes only that the conclusion of that review is that the Society's proposed 2008 rates are appropriate, that will mean, as Mr. Poole testified, that the Society's rates in 2008 will be the same as they were in 2007. Nevertheless, because of the Society's decision to forego participation in the subsidy program, an insured's cost for malpractice insurance in 2008 will increase, even if all relevant individual risk and underwriting factors remain constant. Again, this cost increase is not the result of a rate increase (because the rate will not increase); rather, this cost increase is entirely the result of the Society's decision to reject subsidy funds in 2008. The Society's proposal to allocate approximately one-

third of the \$68.6 million dividend to current policyholders, if allowed, would offset this increase, but only for current policyholders who renew in 2008. As Dr. Ritter testified, the Society's proposal would do nothing to assist doctors who were not policyholders in 2007 and so, for example, the Society's proposal would do nothing to broaden access to health care by attracting new doctors to Maryland. Dr. Ritter's expressed lack of enthusiasm for the Society's approach is thoroughly understandable.

The Society, in its papers and during the hearings, argued for its corporate prerogatives, including the right to issue a dividend. As a general rule of corporate law, the Society is correct that the Society's corporate directors are vested with broad authority, including authority with respect to issuance of a dividend. *See, e.g., Hecht v. Resolution Trust Corp.*, 333 Md. 324, 331-32 (1994) ("directors of a corporation exercise all powers of the corporation, unless conferred on or reserved to stockholders") (footnote omitted). The Society's heavy reliance on this general rule is misplaced, however, (1) because the Society is not a garden variety private corporation; instead, it is a specially created statutory corporation, established to serve important public purposes, *see* Insurance Art., §§ 24-201 – 24-214; and (2) because in 2005, the Society explicitly recognized the General Assembly's role in the Society's creation and the General Assembly's deep interest in the Society's affairs and committed to the General Assembly, as part of the discussion surrounding the enactment of the premium subsidy program, that the Society would not declare dividends. *See* MIA Ex. 18 (discussed *infra* at 9-10).

The question is how to resolve this case consistent with the intent of the General Assembly. For the reasons explained below, I reject the statutory interpretation arguments and result urged by the Society (and supported by Dr. Ritter) and adopt the interpretation and result urged by the MIA. Because I remain convinced that a better result can and should be achieved, I will give the Society, assisted by the MIA staff, an opportunity to achieve that better result.

Accordingly, while this Order is a Final Order based on the actions of the Society to date, payment to the State under this Order is not due until thirty days from the date

of this Order. The purpose of delaying the Society's payment obligation is to give the parties, and particularly the Society, an opportunity to find an acceptable way to apply the \$68.6 million in dividend funds to support rates in 2008. To achieve that end, the Society would need to rescind its September 12th dividend action and work diligently with the MIA to devise a rate structure for 2008 acceptable to the MIA. In crafting a proposal to use the dividend funds to support rates, if the Society decides to pursue that option, the Society should endeavor to minimize, to the extent practicable and lawful, any tax liability. Should I receive notification within the next 30 days, and thus prior to the date on which the Society's payment to the State is due, of the establishment of an acceptable rate structure for 2008 that is supported by the dividend funds, I will consider rescinding this Order. Barring that, for the reasons detailed below, the Society must pay the entire \$68.6 million dividend to the State and, specifically, to the Rate Stabilization Account no later than 30 days from the date of this Order.

Reasons for Decision

The decision to require that 100% of the Society's \$68.6 million dividend be awarded to the State for the Rate Stabilization Account is supported by three closely related reasons: (1) it is the result dictated by the only fair and reasonable interpretation of the applicable statutes and, therefore, it is the only result that honors legislative intent; (2) it defies common sense for the Society and its policyholders to have been the beneficiaries of the State's taxing power and then when, in very short order, prosperity returns and the Society has generated a substantial surplus, for the Society to pay its policyholders a dividend before the State is made whole; and (3) it is the result consistent with the Society's commitment to the General Assembly that the Society would not issue dividends.

1. Statutory Interpretation

The resolution of this case turns on the interpretation of two statutes in the Insurance Article, § 19-805(h)(1) and § 24-211(c). A long line of decisions of the Court of Appeals establishes that the cardinal rule of statutory interpretation is to give effect to

legislative intent. See *Walzer v. Osborne*, 395 Md. 563, 571-574 (2006) (reciting the core principles of statutory interpretation with citations to numerous cases). The interpretive task necessarily begins with the statutory language, see *id.* at 517-572, with the goal being to give rational effect to all statutory language in the context of the overall statutory scheme. See *id.* at 573 (“the meaning of the plainest language is controlled by the context in which it appears”) (citation and quotation omitted).

Section 19-805(h)(1) provides as follows:

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...

Section 24-211(c) provides as follows:

(c) (1) Before the Society may pay to its members a dividend or similar distribution, the Society shall provide to the Commissioner, using a methodology prescribed by the Commissioner, an analysis indicating the extent to which the distribution results from any excess of premiums collected over accumulated losses for incidents arising in any premium year during which the State provided financial assistance.

(2)(i) To the extent the analysis required under Paragraph (1) of this subsection determines that funds available for distribution are attributed to a year in which financial assistance is provided, the Commissioner shall order the Society to pay a portion of the distribution to the State.

(ii) The amount paid to the State shall be determined based on the ratio of State expenditures for financial assistance to total premiums earned for each premium year for which State financial assistance was made.

The meaning and intent of these statutes come through when they are read with care and in relationship to each other. Section 19-805(h)(1) controls when, as now, the

Rate Stabilization Account is still operating because that is “[d]uring the period in which disbursements are made from the Rate Stabilization Account [and] ... a medical professional liability insurer conducting business as a mutual company [the Society] [declares] ... a dividend.” When the Account is still operating, as it is currently, and a mutual insurer (the Society) declares a dividend, “a disbursement from the Rate Stabilization Account to [the Society] shall be reduced by the value of a dividend.” Because the subsidy program continues to operate and the Society remains fully eligible to receive disbursements, this is still “[d]uring the period in which disbursements are made from the Rate Stabilization Account.” Dividend funds are thus available to reduce (repay) disbursements from the Account so long as total disbursements from the Rate Stabilization Account to the mutual insurer exceed the dividend. That is precisely the present situation as it is undisputed that subsidy disbursements to the Society have totaled approximately \$72.4 million and the declared dividend is \$68.6 million.

Any other reading of § 19-805(h)(1) would lead to a result that the General Assembly could not possibly have intended. It strains credulity to believe that the General Assembly intended to subsidize a mutual insurer (the Society) and its policyholders during tough times and then, even as the subsidy program continued but prosperity returned (as evidenced by the Society’s large and growing surplus), for the insurer to declare a dividend for the benefit of its policyholders. Permitting that result would put the State in the position of using its taxing authority to confer a windfall on the insurer’s policyholders by allowing the insurer to issue a dividend that the insurer “earned” in no small measure because the State gave the Society the premium subsidy. The General Assembly never intended this result, and those who paid the tax to restore the Society to prosperity, HMO’s and ultimately their members, would rightly complain about that outcome.

Section 24-211(c), in contrast to § 19-805(h)(1), is concerned with the treatment of dividends after the expiration of the Rate Stabilization Account, *i.e.*, after the termination of the premium subsidy program. Section 24-211(c) is inapplicable at this point because the Rate Stabilization Account has not expired as it will continue to operate in 2008 and the Society continues to be eligible to participate in the subsidy

program in 2008. If after the expiration of the Rate Stabilization Account the Society declares a dividend, § 24-211(c) provides that at least a portion of that dividend may belong to the State if it was earned during a year in which State financial assistance was provided. The General Assembly enacted this recapture mechanism to preserve the State's right to participate in the Society's return to prosperity even after the expiration of the subsidy program. In sum, the provisions of § 24-211(c) are highly thoughtful and important ones, but they have no bearing on the outcome of this matter because the Rate Stabilization Account has not yet expired.

On the undisputed facts of this case, § 19-805(h)(1) operates to require the Society to pay the entire \$68.6 million dividend to the State for the benefit of the Rate Stabilization Account.

2. Common Sense

The interpretation of statutory provisions should align with common sense. See *Walzer*, 395 Md. at 573 ("we avoid a construction of a statute that is unreasonable, illogical, or inconsistent with common sense") (quotation and citation omitted). The interpretation of §§ 19-805(h)(1) and 24-211(c) that aligns with common sense is the one set forth above. The interpretation pressed by the Society has the Society purchasing prosperity with State tax funds and then dividending a portion of that prosperity to its members even while (1) the Society remains eligible to receive further subsidy payments; and (2) the amount of the State subsidy that the Society has received exceeds the amount of the Society's dividend and exceeds the amount that the Society proposes to repay the State.

Mr. Poole testified that the premium subsidy program was not structured as a loan. While that is a fair observation, it does not mean that the General Assembly intended to confer a windfall on the Society's policyholders, nor does it mean that the General Assembly was unmindful of protecting the State's interests. The Society's rapid return to prosperity did not occur unassisted; rather, it followed a State provided tax subsidy. The General Assembly took care in § 19-805(h)(1) to assure that if

prosperity returned during the life of the Rate Stabilization Account, as it has, the State would be made whole before the Society showered its policyholders with dividends. The strength of this common sense outcome is confirmed by the General Assembly's manifest unhappiness with the Society's practice of declaring dividends, and the Society's commitment to discontinue this legislatively disfavored practice. *See infra*.

3. The Society's Commitment Re: Not Issuing Dividends

A subject of concern to the General Assembly in 2004-2005 as it was grappling with what was then called a "medical malpractice insurance crisis" was the Society's practice of using (reducing) its surplus by declaring dividends for the benefit of policyholders, instead of using the surplus to support (hold constant, if not reduce) policyholders' premium rates. This subject was a logical one for the General Assembly to be concerned about when it was asked to help solve the "crisis" by providing a subsidy with funds generated from State tax revenues. In this context, the Society, through counsel, made an unequivocal commitment to the General Assembly to use its surplus to support rates and not declare dividends:

It came through loud and clear in House Bill 2 that the General Assembly does not want Medical Mutual to do that anymore with its unnecessary or excess surplus. That you want us to use excess surplus to support rates, and that is a policy decision that is yours to make. You created Medical Mutual. We respect that decision. We accept that decision and we'll do that in the future. So I think you can be assured that there will not be dividends in the future. Instead, the surplus that is more than is required will be used to support rates.

* * * *

We are absolutely comfortable with the legislative decision that there won't be dividends in the future – it will be used to keep rate increases at a lower level – if we get to the happy time again that we have that surplus.

Testimony of the Society before Senate Finance Committee, February 23, 2005 (MIA Ex. 18) (emphases added).

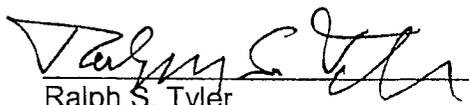
The Society now strains to avoid the impact of its prior commitment. The Society's words are telling, however, because they shed clarifying light, to the extent any clarification is needed, on the General Assembly's understanding and intent when it enacted the premium subsidy program. The Society's unqualified assurances to the General Assembly that the Society would use its surplus to support rates and not to pay dividends flatly contradict the Society's current strained statutory interpretation.

There is no need to decide the extent to which the Society's commitment not to use its surplus to pay dividends bars the Society from doing so either now or in the future. It is sufficient for present purposes to note that the interpretation set forth above of how § 19-805(h)(1) operates as applied to the Society's present \$68.6 million dividend is the interpretation that is consistent with the Society's commitment to the General Assembly. As a former President of the United States famously once said, "trust, but verify." Section 19-805(h)(1) assures (verifies) that the Society's "no dividend" commitment would hold at least while the Rate Stabilization Account remains in effect and while total disbursements from that Account to the Society exceed the amount of the Society's declared dividend.

Pursuant to §§ 1-201, 2-204, 2-214 and 19-805(h)(1) of the Insurance Article and based upon a careful review of the entire record and for the reasons stated above, it is hereby **ORDERED** as follows:

1. The Society shall take no action to implement its September 12, 2007, dividend resolution except in conformance with paragraph 2 below; and
2. The Society shall pay the entire \$68.6 million dividend from the September 12, 2007 dividend resolution to the State for the benefit of the Rate Stabilization Account no later than 30 days from the date of this Order.

SO ORDERED, effective this **20th** day of November, 2007.


Ralph S. Tyler
Insurance Commissioner