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MIA BULLETIN 06-14

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

SUBJECT: Extended Reporting Period Coverage – Eligibility for State Subsidies from the Maryland Health Care Provider Rate Stabilization Fund – Rate Stabilization Account

DATE: July 13, 2006

The Administration has recently been asked whether the premium paid by a health care provider for the purchase of an Optional Extended Reporting Period (OERP) is eligible for subsidization by the Maryland Health Care Provider Rate Stabilization Fund - Rate Stabilization Account (the "RS Account"). For the reasons set forth below, the Administration concludes that the premium charged for the purchase of an OERP on an existing policy is eligible for subsidization from the RS Account.

Most medical professional liability insurance policies are issued as "claims-made" policies. Generally, a "claims-made" policy covers the liability that an insured incurs because of injury or damage that is the subject of a claim that is first reported to, or filed against, the insured during the policy period and that arises from a covered event which occurred between the retroactive date listed in the policy and the date on which the policy terminates. Claims-made policies may offer a provision that extends coverage under the policy to claims that are first reported or filed after the expiration of the policy, but within the extended reporting period. An extended reporting period may have a stated time limit (i.e., 60 days) or may have no temporal limit. An extended reporting period is commonly referred to as "tail" coverage.

Many medical professional liability policies include, at no additional premium, an extended reporting period that applies to certain policyholders that meet certain criteria (e.g., to an insured who has been a policyholder for a prescribed period of time and who retires from practice or becomes permanently and totally disabled during the policy period). However, as a general rule, a medical professional who wants the protection of an extended reporting period

must affirmatively elect to purchase one or more of the options offered by the insurer at an additional premium. OERPs are generally elected after a policy has been issued and are added by rider or endorsement to the existing policy. The premium charged for an OERP is part of an insurer's filed and approved rating plan.

The monies allocated to the RS Account are to be used to pay authorized medical professional liability insurance premium subsidies to eligible health care providers who have not declined the subsidy and whose medical professional liability insurers have elected to participate in the Fund. IN §§ 19-803, 19-805. The subsidy is an amount that is based on a percentage of premium. IN § 19-805(b). The only premium that is excluded from the subsidy calculation is that attributable to "a premium surcharge or the loss of a discount due to a health care provider's loss experience." IN § 19-805(c). Premium means "consideration for insurance." IN § 1-101(ff)(1). "Insurance" means "a contract to indemnify or to pay or provide a specified or determinable amount or benefit on the occurrence of a determinable contingency." IN § 1-101(s).

Premium attributable to the election of an OERP is part of the consideration paid for a contract of medical professional liability coverage. Extending the reporting period under a medical professional liability policy for an additional premium is no different than adjusting any other element of coverage that impacts the premium due under the policy. Consequently, absent an express statutory exception, the premium subject to subsidization includes premium attributable to the election of an OERP.

Inasmuch as the premium attributable to the election of an OERP was not excluded from the premium subject to the subsidy calculation, policies otherwise eligible for the subsidy are eligible for, and insurers may request subsidies on these policies on behalf of their policyholders for, the portion of the premium that attributable to an OERP. The subsidy factor for the premium attributable to the OERP will be the same as the subsidy factor applied to the policy with respect to which the OERP is elected (i.e., the subsidy factor determined by the MIA for policies with an effective date during the subsidy year). For example, an OERP elected for a policy issued or renewed in subsidy year 2006 will be eligible for a subsidy of 25%. (see MIA Bulletin No. 05-7 *Procedures for Obtaining Reimbursements for the Maryland Health Care Provider Rate Stabilization Fund* and MIA Bulletin No. 05-18 *2006 Rate Stabilization Subsidy Factor and Procedures* for additional information.) For subsidy application and reimbursement purposes, the addition of the OERP premium should be treated and processed in the same manner as any other policy change resulting in a charge of additional premium under the policy.

If you have any questions regarding this Bulletin, please contact Lester C. Schott, Associate Commissioner, at (410) 468-2119.