

## Chapter 6

## (House Bill 1795)

AN ACT concerning

**Maryland Health Benefit Exchange – Establishment of a Reinsurance Program**

FOR the purpose of repealing the requirement that the Maryland Health Benefit Exchange implement or oversee the implementation of state-specific requirements for transitional reinsurance and risk adjustment under the Affordable Care Act; repealing the prohibition on the Exchange's assuming responsibility for the program corridors for health benefit plans in certain exchanges established under certain provisions of the Affordable Care Act; repealing the requirement that the Exchange operate or oversee the operation of a transitional reinsurance program in accordance with certain regulations for certain coverage years; repealing the requirement that the Exchange operate or oversee the operation of a certain risk adjustment program; repealing the requirement that the Exchange, beginning in a certain year, strongly consider using a certain model for a certain purpose; altering the purposes of the Maryland Health Benefit Exchange Fund; altering the contents of the Maryland Health Benefit Exchange Fund; providing that certain funds may be used only for the purposes of the State Reinsurance Program; requiring, rather than authorizing, the Exchange, in consultation with the Maryland Insurance Commission and as approved by the Maryland Health Benefit Exchange Board, to establish and implement a State Reinsurance Program to provide reinsurance to certain carriers and that meets certain requirements and is consistent with certain laws; requiring that the Program be designed to mitigate the impact of certain individuals on certain rates; requiring the Exchange, in consultation with the Commissioner and as approved by the Board and based on available funds, to establish certain parameters for reinsurance in certain years; authorizing the Exchange, in consultation with the Commissioner and as approved by the Board, to alter the parameters under certain circumstances; providing that, beginning on a certain date, funding for reinsurance in the individual health insurance market through the Program may be made from certain sources by using certain funds; requiring that, beginning on a certain date and under certain circumstances, certain State funding the implementation of the Program for the reinsurance of the individual market through the Program be contingent on the Centers for Medicare and Medicaid Services' U.S. Secretary of Health and Human Services and the U.S. Secretary of the Treasury approving a waiver application under a certain provision of federal law; requiring the Exchange to adopt certain regulations on or before a certain date; authorizing requiring the Exchange and the Maryland Insurance, in consultation with the Commissioner and as approved by the Board, to submit a waiver and seek certain funding under certain provisions of federal law as soon as practicable but not later than a certain date; authorizing, on or before a certain date, the Commissioner to waive certain statutory requirements under certain circumstances; making this Act an emergency measure; and generally relating to the establishment of a reinsurance program by the Maryland Health Benefit Exchange.

## BY repealing

Article – Insurance

Section 31–117

Annotated Code of Maryland

(2017 Replacement Volume)

BY repealing and reenacting, with amendments,Article – InsuranceSection 31–107Annotated Code of Maryland(2017 Replacement Volume)

## BY adding to

Article – Insurance

Section 31–117 and 31–117.1

Annotated Code of Maryland

(2017 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 31–117 of Article – Insurance of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

**Article – Insurance**31–107.(a) There is a Maryland Health Benefit Exchange Fund.(b) (1) The purpose of the Fund is to:

(i) provide funding for the operation and administration of the Exchange in carrying out the purposes of the Exchange under this title; and

(ii) provide funding for the establishment and operation of the State Reinsurance Program authorized under ~~§ 31–117~~ of this title.

(2) The operation and administration of the Exchange and the State Reinsurance Program may include functions delegated by the Exchange to a third party under law or by contract.

(c) The Exchange shall administer the Fund.

(d) (1) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

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

(e) The Fund consists of:

(1) any user fees or other assessments collected by the Exchange;

(2) all revenue deposited into the Fund that is received from the distribution of the premium tax under § 6–103.2 of this article;

[(3) all revenue transferred to the Fund before July 1, 2016, from the Maryland Health Insurance Plan Fund;]

[(4) (3) income from investments made on behalf of the Fund;

[(5) (4) interest on deposits or investments of money in the Fund;

[(6) (5) money collected by the Board as a result of legal or other actions taken by the Board on behalf of the Exchange or the Fund;

[(7) (6) money donated to the Fund;

[(8) (7) money awarded to the Fund through grants; [and]

(8) ANY PASS-THROUGH FUNDS RECEIVED FROM THE FEDERAL GOVERNMENT UNDER A WAIVER APPROVED UNDER § 1332 OF THE AFFORDABLE CARE ACT;

(9) ANY FUNDS DESIGNATED BY THE FEDERAL GOVERNMENT TO PROVIDE REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN THE STATE;

(10) ANY FUNDS DESIGNATED BY THE STATE TO PROVIDE REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN THE STATE; AND

[(9) (11) any other money from any other source accepted for the benefit of the Fund.

(f) The Fund may be used only:

(1) for the operation and administration of the Exchange in carrying out the purposes authorized under this title; and

(2) for the establishment and operation of the State Reinsurance Program [authorized under § 31–117 of this title].

(g) (1) The Board shall maintain separate accounts within the Fund for Exchange operations and for the State Reinsurance Program.

(2) Accounts within the Fund shall contain the money that is intended to support the purpose for which each account is designated.

(3) Funds received from the distribution of the premium tax under § 6–103.2 of this article shall be placed in the account for Exchange operations and may be used only for the purpose of funding the operation and administration of the Exchange.

[(4) Funds transferred from the Maryland Health Insurance Plan Fund before July 1, 2016, shall be placed in the account for the State Reinsurance Program and may be used only for the purpose of funding the State Reinsurance Program.]

**(4) THE FOLLOWING FUNDS MAY BE USED ONLY FOR THE PURPOSES OF FUNDING THE STATE REINSURANCE PROGRAM:**

**(I) ANY PASS–THROUGH FUNDS RECEIVED FROM THE FEDERAL GOVERNMENT UNDER A WAIVER APPROVED UNDER § 1332 OF THE AFFORDABLE CARE ACT;**

**(II) ANY FUNDS DESIGNATED BY THE FEDERAL GOVERNMENT TO PROVIDE REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN THE STATE; AND**

**(III) ANY FUNDS DESIGNATED BY THE STATE TO PROVIDE REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN THE STATE.**

(h) (1) Expenditures from the Fund for the purposes authorized by this subtitle may be made only:

(i) with an appropriation from the Fund approved by the General Assembly in the State budget; or

(ii) by the budget amendment procedure provided for in Title 7, Subtitle 2 of the State Finance and Procurement Article.

(2) Notwithstanding § 7–304 of the State Finance and Procurement Article, if the amount of the distribution from the premium tax under § 6–103.2 of this article exceeds in any State fiscal year the actual expenditures incurred for the operation and administration of the Exchange, funds in the Exchange operations account from the premium tax that remain unspent at the end of the State fiscal year shall revert to the General Fund of the State.

(3) If operating expenses of the Exchange may be charged to either State or non-State fund sources, the non-State funds shall be charged before State funds are charged.

(i) (1) The State Treasurer shall invest the money of the Fund in the same manner as other State money may be invested.

(2) Any investment earnings of the Fund shall be credited to the Fund.

(3) Except as provided in subsection (h)(2) of this section, no part of the Fund may revert or be credited to the General Fund or any special fund of the State.

(j) A debt or an obligation of the Fund is not a debt of the State or a pledge of credit of the State.

31–117.

**(A) THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL ESTABLISH AND IMPLEMENT A STATE REINSURANCE PROGRAM;**

**(1) TO PROVIDE REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN THE STATE;**

**(2) THAT MEETS THE REQUIREMENTS OF A WAIVER APPROVED UNDER § 1332 OF THE AFFORDABLE CARE ACT; AND**

**(3) THAT IS CONSISTENT WITH STATE AND FEDERAL LAW.**

**(B) THE STATE REINSURANCE PROGRAM SHALL BE DESIGNED TO MITIGATE THE IMPACT OF HIGH-RISK INDIVIDUALS ON RATES IN THE INDIVIDUAL INSURANCE MARKET INSIDE AND OUTSIDE THE EXCHANGE.**

**(C) (1) BASED ON AVAILABLE FUNDS, THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL ESTABLISH REINSURANCE PAYMENT PARAMETERS FOR CALENDAR YEAR 2019 AND EACH SUBSEQUENT CALENDAR YEAR THAT INCLUDE:**

- (I) AN ATTACHMENT POINT;
- (II) A COINSURANCE RATE; AND
- (III) A COINSURANCE CAP.

(2) THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, MAY ALTER THE PARAMETERS ESTABLISHED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION AS NECESSARY TO SECURE FEDERAL APPROVAL FOR A WAIVER SUBMITTED IN ACCORDANCE WITH § 31-117.1(A) OF THIS TITLE.

~~(c)~~ (D) BEGINNING JANUARY 1, 2019, FUNDING FOR REINSURANCE IN THE INDIVIDUAL MARKET THROUGH THE STATE REINSURANCE PROGRAM MAY BE MADE ~~FROM~~ BY USING:

- ~~(1) ANY AVAILABLE STATE FUNDING SOURCE; AND~~
- ~~(2) ANY AVAILABLE FEDERAL FUNDING SOURCE.~~

(1) ANY PASS-THROUGH FUNDS RECEIVED FROM THE FEDERAL GOVERNMENT UNDER A WAIVER APPROVED UNDER § 1332 OF THE AFFORDABLE CARE ACT;

(2) ANY FUNDS DESIGNATED BY THE FEDERAL GOVERNMENT TO PROVIDE REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN THE STATE; AND

(3) ANY FUNDS DESIGNATED BY THE STATE TO PROVIDE REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN THE STATE.

~~(D)~~ (E) ~~BEGINNING JANUARY 1, 2019, IF REQUIRED UNDER THE TERMS AND CONDITIONS OF RECEIVING FEDERAL FUNDS, STATE FUNDING THE IMPLEMENTATION OF A STATE REINSURANCE PROGRAM FOR REINSURANCE IN THE INDIVIDUAL MARKET THROUGH THE STATE REINSURANCE PROGRAM SHALL BE CONTINGENT ON THE CENTERS FOR MEDICARE AND MEDICAID SERVICES' APPROVING A WAIVER~~ APPROVAL FROM THE U.S. SECRETARY OF HEALTH AND HUMAN SERVICES AND THE U.S. SECRETARY OF THE TREASURY OF A STATE INNOVATION WAIVER APPLICATION UNDER § 1332 OF THE AFFORDABLE CARE ACT.

~~(E)~~ (F) ~~THE~~ ON OR BEFORE JANUARY 1, 2019, THE EXCHANGE SHALL ADOPT REGULATIONS IMPLEMENTING THE PROVISIONS OF THIS SECTION.

31-117.1.

(A) ~~THE AS SOON AS PRACTICABLE BUT NOT LATER THAN JULY 1, 2018, THE EXCHANGE AND THE COMMISSIONER MAY, IN CONSULTATION WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL SUBMIT A WAIVER STATE INNOVATION WAIVER APPLICATION UNDER § 1332 OF THE AFFORDABLE CARE ACT TO ESTABLISH A PROGRAM FOR REINSURANCE AND SEEK FEDERAL PASS-THROUGH FUNDING UNDER § 26B OF THE INTERNAL REVENUE CODE AND § 1402 OF THE AFFORDABLE CARE ACT.~~

(B) ON OR BEFORE DECEMBER 31, 2018, THE COMMISSIONER MAY WAIVE ANY NOTIFICATION OR OTHER REQUIREMENTS THAT APPLY TO A CARRIER UNDER THIS ARTICLE IN CALENDAR YEAR 2018 DUE TO THE IMPLEMENTATION OF A WAIVER APPROVED UNDER § 1332 OF THE AFFORDABLE CARE ACT.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, April 5, 2018.