

## Chapter 104

## (Senate Bill 124)

AN ACT concerning

**Maryland Health Benefit Exchange – ~~Establishment of a~~ Assessment  
Applicability and State-Based Individual Market Health Insurance Subsidies  
Program**

FOR the purpose of ~~requiring that a certain assessment be used to fund the State Reinsurance Program and the State-Based Health Insurance Subsidies Program; requiring the Maryland Health Benefit Exchange to allocate certain funds between the State Reinsurance Program and the State-Based Health Insurance Subsidies Program in a certain manner; clarifying the applicability of a certain assessment to certain entities for certain products; altering the purpose of the Maryland Health Benefit Exchange Fund to include providing funding for the establishment and operation of the State-Based Health Insurance Subsidies Program; providing that the operation and administration of the State-Based Health Insurance Subsidies Program may include certain functions delegated to certain third parties; altering the contents of the Fund; altering the purposes for which the Fund may be used; requiring the Board of Trustees of the Exchange to maintain a separate account within the Fund for the State-Based Health Insurance Subsidies Program under certain circumstances; clarifying that certain funds received from the federal government under a certain waiver may be used only for the purposes of funding the State Reinsurance Program; requiring authorizing the Exchange, in consultation with the Maryland Insurance Commissioner and as approved by the Board, to establish and implement a State-Based Health Insurance Subsidies Program to provide subsidies to individuals for the purchase of health benefit plans in the individual health insurance market; requiring the State-Based Health Insurance Subsidies Program to be designed to reduce the amount that individuals pay for certain health benefit plans in the individual health insurance market; requiring the Exchange, in consultation with the Commissioner and as approved by the Board and based on available funds, to establish certain parameters for a certain year and each subsequent calendar year; authorizing the Exchange, in consultation with the Commissioner and as approved by the Board, to alter the parameters under certain circumstances years; providing that, beginning on a certain date, funding for the State-Based Health Insurance Subsidies Program may be made by using certain funds; requiring the Exchange to adopt regulations on or before a certain date; requiring the Board authorizing the Exchange, in consultation with the Commissioner and as approved by the Board, to make a certain determination concerning a certain waiver and apply for a certain waiver under certain circumstances on or before a certain date; requiring the Exchange to track certain information, post the information on a certain website, and include the information in a certain report; and generally relating to the Maryland Health Benefit Exchange and the State-Based Health Insurance Subsidies Program~~ clarifying the applicability of a certain assessment to certain entities for certain products; requiring

*the Maryland Health Benefit Exchange to report to certain committees of the General Assembly on or before a certain date on certain information related to establishing a State-based individual subsidy program in Maryland; and generally relating to the Maryland Health Benefit Exchange and State-based individual market health insurance subsidies.*

BY repealing and reenacting, with amendments,  
 Article – Insurance  
 Section 6–102.1 ~~and 31–107~~  
 Annotated Code of Maryland  
 (2017 Replacement Volume and 2019 Supplement)

~~BY adding to  
 Article – Insurance  
 Section 31–122 and 31–123  
 Annotated Code of Maryland  
 (2017 Replacement Volume and 2019 Supplement)~~

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

### Article – Insurance

6–102.1.

(a) This section applies to:

(1) an insurer, a nonprofit health service plan, a health maintenance organization, a dental plan organization, a fraternal benefit organization, and any other person subject to regulation by the State that provides a product that:

(i) ~~is~~ **WAS** subject to § 9010 of the Affordable Care Act, **AS IN EFFECT ON DECEMBER 1, 2019**; and

(ii) may be subject to an assessment by the State; and

(2) a managed care organization authorized under Title 15, Subtitle 1 of the Health – General Article.

(b) The purpose of this section is to assist in the stabilization of the individual health insurance market by assessing a health insurance provider fee that is attributable to State health risk for calendar years 2019 through 2023, both inclusive, as provided for under subsection (c) of this section.

(c) (1) In calendar year 2019, in addition to the amounts otherwise due under this subtitle, an entity subject to this section shall be subject to an assessment of 2.75% on

all amounts used to calculate the entity's premium tax liability under § 6-102 of this subtitle or the amount of the entity's premium tax exemption value for calendar year 2018.

(2) In calendar years 2020 through 2023, both inclusive, in addition to the amounts otherwise due under this subtitle, an entity subject to this section shall be subject to an assessment of 1% on all amounts used to calculate the entity's premium tax liability under § 6-102 of this subtitle or the amount of the entity's premium tax exemption value for the immediately preceding calendar year.

(3) The assessments required in paragraphs (1) and (2) of this subsection are for products that:

(i) ~~are~~ WERE subject to § 9010 of the Affordable Care Act, AS IN EFFECT ON DECEMBER 1, 2019; and

(ii) may be subject to an assessment by the State.

(4) The calculation of the assessments required under paragraphs (1) and (2) of this subsection shall be made without regard to:

(i) the threshold limits established in § 9010(b)(2)(A) of the Affordable Care Act; or

(ii) the partial exclusion of net premiums provided for in § 9010(b)(2)(B) of the Affordable Care Act.

(d) ~~(1)~~ Notwithstanding § 2-114 of this article, the assessment required under this section shall be distributed by the Commissioner to the Maryland Health Benefit Exchange Fund established under § 31-107 of this article.

~~(2) THE ASSESSMENT REQUIRED UNDER THIS SECTION SHALL BE USED TO FUND THE STATE REINSURANCE PROGRAM ESTABLISHED UNDER § 31-117 OF THIS ARTICLE AND THE STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM ESTABLISHED UNDER § 31-122 OF THIS ARTICLE.~~

~~(3) THE MARYLAND HEALTH BENEFIT EXCHANGE SHALL ALLOCATE THE FUNDS COLLECTED UNDER THIS SECTION BETWEEN THE STATE REINSURANCE PROGRAM AND THE STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM IN A MANNER THAT MAXIMIZES THE LONG-TERM AFFORDABILITY OF HEALTH PLANS IN THE INDIVIDUAL MARKET.~~

~~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 this title; AND~~

~~(iii) PROVIDE FUNDING FOR THE ESTABLISHMENT AND OPERATION OF THE STATE BASED HEALTH INSURANCE SUBSIDIES PROGRAM AUTHORIZED UNDER THIS TITLE.~~

~~(2) The operation and administration of the Exchange [and], the State Reinsurance Program, AND THE STATE BASED HEALTH INSURANCE SUBSIDIES 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) income from investments made on behalf of the Fund;~~

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

~~(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;~~

~~(6) money donated to the Fund;~~

~~(7) money awarded to the Fund through grants;~~

~~(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;~~

~~(11) ANY FUNDS DESIGNATED BY THE STATE TO PROVIDE STATE-BASED HEALTH INSURANCE SUBSIDIES TO INDIVIDUALS IN THE STATE;~~

~~[(11)](12) any federal funds received in accordance with § 31-121 of this title for the administration of small business tax credits; and~~

~~[(12)](13) 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;~~

**AND**

~~(3) FOR THE ESTABLISHMENT AND OPERATION OF THE STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM.~~

~~(g) (1) The Board shall maintain separate accounts within the Fund for Exchange operations [and], for the State Reinsurance Program, AND, IF ESTABLISHED BY THE EXCHANGE, FOR THE STATE-BASED HEALTH INSURANCE SUBSIDIES 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) 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 TO PROVIDE~~

~~REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN THE STATE;~~

~~(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.~~

~~31-122.~~

~~(A) THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL MAY ESTABLISH AND IMPLEMENT A STATE BASED HEALTH INSURANCE SUBSIDIES PROGRAM TO PROVIDE SUBSIDIES~~

~~TO INDIVIDUALS FOR THE PURCHASE OF HEALTH BENEFIT PLANS IN THE INDIVIDUAL HEALTH INSURANCE MARKET.~~

~~(B) THE STATE BASED HEALTH INSURANCE SUBSIDIES PROGRAM AUTHORIZED UNDER THIS SECTION SHALL BE DESIGNED TO REDUCE THE AMOUNT THAT INDIVIDUALS PAY FOR HEALTH BENEFIT PLANS IN THE INDIVIDUAL HEALTH INSURANCE MARKET.~~

~~(C) (1) BASED ON AVAILABLE FUNDS, THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL ESTABLISH SUBSIDY ELIGIBILITY AND PAYMENT PARAMETERS FOR CALENDAR YEAR 2021 AND EACH SUBSEQUENT CALENDAR YEAR EACH CALENDAR YEAR THE PROGRAM IS IN EFFECT.~~

~~(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 § 31-123 OF THIS TITLE.~~

~~(D) BEFORE IMPLEMENTING THE STATE BASED HEALTH INSURANCE SUBSIDIES PROGRAM UNDER THIS SECTION, THE EXCHANGE SHALL STUDY AND REPORT TO THE BOARD ON THE FOLLOWING:~~

~~(1) AN ESTIMATE OF THE IMPACT OF USING FUNDING FOR STATE BASED SUBSIDIES ON FUNDING AVAILABILITY FOR REINSURANCE IN THE INDIVIDUAL MARKET, USING THE ACTUAL STATE LIABILITY FOR THE STATE REINSURANCE PROGRAM FOR THE 2019 BENEFIT YEAR; AND~~

~~(2) THE APPROPRIATE ALLOCATION OF AVAILABLE FUNDING FOR REINSURANCE AND STATE BASED SUBSIDIES THAT WILL MAXIMIZE ENROLLMENT AND AFFORDABILITY IN THE INDIVIDUAL MARKET.~~

~~(D)(E) BEGINNING JANUARY 1, 2021, FUNDING FOR THE STATE BASED HEALTH INSURANCE SUBSIDIES PROGRAM MAY BE MADE BY USING ANY FUNDS DESIGNATED BY THE STATE TO PROVIDE SUBSIDIES TO INDIVIDUALS WHO MEET THE SUBSIDY ELIGIBILITY AND PAYMENT PARAMETERS ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION.~~

~~(E) ON OR BEFORE JANUARY 1, 2021, THE EXCHANGE SHALL ADOPT REGULATIONS IMPLEMENTING THE PROVISIONS OF THIS SECTION.~~

~~(F) (1) IF THE EXCHANGE ESTABLISHES THE STATE BASED HEALTH INSURANCE SUBSIDIES PROGRAM UNDER THIS SECTION, THE EXCHANGE SHALL~~

~~TRACK ON A MONTHLY BASIS EXPENDITURES ON SUBSIDIES PROVIDED UNDER THE PROGRAM, INCLUDING:~~

~~(I) THE AVERAGE NUMBER OF INDIVIDUALS RECEIVING SUBSIDIES UNDER THE PROGRAM; AND~~

~~(II) THE AVERAGE SUBSIDY AMOUNT RECEIVED BY INDIVIDUALS UNDER THE PROGRAM.~~

~~(2) THE INFORMATION TRACKED BY THE EXCHANGE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL:~~

~~(I) BE POSTED ON THE WEBSITE OF THE EXCHANGE; AND~~

~~(II) BE INCLUDED IN THE ANNUAL REPORT REQUIRED UNDER § 31-119(D) OF THIS SUBTITLE.~~

~~31-123.~~

~~ON OR BEFORE SEPTEMBER 1, 2020, THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL:~~

~~(1) DETERMINE WHETHER THE ESTABLISHMENT OF THE STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM REQUIRES THE STATE TO APPLY TO AND RECEIVE APPROVAL FROM THE U.S. SECRETARY OF HEALTH AND HUMAN SERVICES FOR A STATE INNOVATION WAIVER UNDER § 1332 OF THE AFFORDABLE CARE ACT; AND~~

~~(2) IF THE EXCHANGE DETERMINES THAT A STATE INNOVATION WAIVER IS REQUIRED TO ESTABLISH THE STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM, APPLY FOR THE STATE INNOVATION WAIVER.~~

~~THE EXCHANGE MAY, IN CONSULTATION WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, APPLY FOR A STATE INNOVATION WAIVER UNDER § 1332 OF THE AFFORDABLE CARE ACT TO IMPLEMENT THE STATE-BASED HEALTH INSURANCE SUBSIDIES PROGRAM.~~

*SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1, 2020, the Maryland Health Benefit Exchange shall report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2-1257 of the State Government Article, on the following as it relates to establishing State-based individual market health insurance subsidies in the State:*



(1) the experiences of state-based individual market health insurance subsidies in other states, particularly those with a reinsurance program;

(2) the effect the Maryland Easy Enrollment Health Program has had on the uninsured rate and risk pool in the individual market;

(3) the population that would be the intended target of the State-based individual market health insurance subsidies, including age and income level;

(4) the number of individuals currently enrolled in the individual market in the State who would be eligible for State-based individual market health insurance subsidies;

(5) if young adults would be the intended target of the State-based individual market health insurance subsidies, whether State-based individual market health insurance subsidies alone will encourage more young adults to enroll in the individual market and whether cost-sharing reductions will be necessary;

(6) the average amount of individual market health insurance subsidies needed for a State-based individual market health insurance subsidy program to effectively cover more individuals and lower the risk of the individual market pool;

(7) the amount of State-based individual market health insurance subsidy funding necessary to reduce rates in the individual market by 1% and 5%;

(8) an estimate of the impact that funding for State-based individual market health insurance subsidies will have on the availability of funds for reinsurance in the individual market, using the actual State liability for the State Reinsurance Program for the 2019 benefit year;

(9) the appropriate allocation of available funding for reinsurance and State-based individual market health insurance subsidies that will maximize enrollment and affordability in the individual market;

(10) the staffing and infrastructure needs to administer a State-based individual market health insurance subsidy program; and

(11) the impact additional State-based individual market health insurance subsidies will have on federal subsidies and whether the State will need to amend its current State Innovation Waiver under § 1332 of the Affordable Care Act or request an additional waiver.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020.

**Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.**