

SENATE BILL 879

D3, J1, J3

0lr1617
CF 0lr2854

By: **Senator Kelley**

Introduced and read first time: February 3, 2020

Assigned to: Finance and Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Maryland Infant Lifetime Care Trust Funded by HSCRC and**
3 **Maryland Patient Safety Center Duties**

4 FOR the purpose of establishing certain requirements and procedures regarding certain
5 settlement agreements for claims arising out of a birth-related neurological injury
6 subject to certain provisions of this Act; prohibiting certain payments from being
7 required to be made by certain persons and certain judgments from being made or
8 entered; requiring the Health Services Cost Review Commission to study and make
9 available a certain report for a certain purpose; requiring the Commission to compile
10 certain information for a certain purpose and to define by regulation a certain
11 methodology; requiring the Commission to assess a certain fee on certain hospitals;
12 declaring certain findings and the intent of the General Assembly; requiring the
13 Maryland Patient Safety Center to convene a certain Perinatal Clinical Advisory
14 Committee; requiring the Committee to take certain actions and report annually to
15 the Board of Trustees of the Maryland Infant Lifetime Care Trust; requiring the
16 Board to allocate funding each year to the Center for a certain purpose; requiring
17 that certain funding be apportioned from General Fund allocations; requiring the
18 Board to allocate a certain grant each year to the Maryland Department of Health
19 for a certain purpose; requiring the Department to report annually to the Board on
20 certain matters; establishing the Maryland Infant Lifetime Care Trust; providing for
21 the governance, administration, and purposes of the Trust; requiring the
22 Commission, on or before the beginning of each fiscal year, to assess certain
23 premiums, increase certain hospital rates, and collect certain amounts from certain
24 hospitals; requiring the Commission to adopt certain regulations; requiring certain
25 hospitals to pay certain premium amounts on or before a certain date each year;
26 requiring the Commission to collect certain premium amounts and pay the amounts
27 to the Trust; establishing a certain dispute resolution process; specifying the terms
28 of the initial members of the Board; defining certain terms; providing for the
29 application of this Act; and generally relating to birth injuries.

30 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Courts and Judicial Proceedings

Section 3–2D–01 and 3–2D–02 to be under the new subtitle “Subtitle 2D. Payment of Future Medical Expenses in Birth Injury Cases – Maryland Infant Lifetime Care Trust”

Annotated Code of Maryland

(2013 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – Health – General

Section 19–207(b), 19–220(a), and 19–223

Annotated Code of Maryland

(2019 Replacement Volume)

BY adding to

Article – Health – General

Section 20–2001 to be under the new subtitle “Subtitle 20. Birth–Related Injury Prevention”; and 20–2101 through 20–2115 to be under the new subtitle “Subtitle 21. Maryland Infant Lifetime Care Trust”

Annotated Code of Maryland

(2019 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

SUBTITLE 2D. PAYMENT OF FUTURE MEDICAL EXPENSES IN BIRTH INJURY CASES – MARYLAND INFANT LIFETIME CARE TRUST.

3–2D–01.

IN THIS SUBTITLE, “BIRTH–RELATED NEUROLOGICAL INJURY”, “CLAIMANT”, “OFFICE”, “QUALIFIED PLAINTIFF”, “QUALIFYING HEALTH CARE COSTS”, AND “TRUST” HAVE THE MEANINGS STATED IN § 20–2101 OF THE HEALTH – GENERAL ARTICLE.

3–2D–02.

(A) (1) (i) EACH SETTLEMENT AGREEMENT FOR CLAIMS ARISING OUT OF A BIRTH–RELATED NEUROLOGICAL INJURY SUBJECT TO TITLE 20, SUBTITLE 21 OF THE HEALTH – GENERAL ARTICLE THAT PROVIDES FOR THE PAYMENT OF FUTURE MEDICAL EXPENSES FOR A CLAIMANT SHALL PROVIDE THAT, IN THE EVENT A FINAL DETERMINATION IS MADE THAT THE CLAIMANT IS A QUALIFIED PLAINTIFF, ALL PAYMENTS FOR FUTURE MEDICAL EXPENSES SHALL BE PAID IN ACCORDANCE WITH TITLE 20, SUBTITLE 21 OF THE HEALTH – GENERAL ARTICLE, INSTEAD OF

1 THE PORTION OF THE SETTLEMENT AGREEMENT THAT PROVIDES FOR PAYMENT OF
2 THE EXPENSES.

3 (II) THE FUTURE MEDICAL EXPENSES OF A CLAIMANT WHO IS A
4 QUALIFIED PLAINTIFF SHALL BE PAID IN ACCORDANCE WITH TITLE 20, SUBTITLE
5 21 OF THE HEALTH – GENERAL ARTICLE, EVEN IF A SETTLEMENT AGREEMENT DOES
6 NOT SO PROVIDE, AND THE COURT SHALL DIRECT THE MODIFICATION OF THE
7 AGREEMENT TO INCLUDE THIS REQUIREMENT AS A CONDITION OF COURT
8 APPROVAL.

9 (2) (I) IN ANY CASE IN WHICH THE JURY OR COURT HAS MADE AN
10 AWARD FOR FUTURE MEDICAL EXPENSES ARISING OUT OF A BIRTH-RELATED
11 NEUROLOGICAL INJURY SUBJECT TO TITLE 20, SUBTITLE 21 OF THE
12 HEALTH – GENERAL ARTICLE, ANY PARTY TO THE ACTION OR PERSON AUTHORIZED
13 TO ACT ON BEHALF OF THE PARTY MAY APPLY TO THE COURT TO REQUEST THAT, ON
14 A FINAL DETERMINATION THAT THE PLAINTIFF IS A QUALIFIED PLAINTIFF, THE
15 JUDGMENT REFLECT THAT THE FUTURE MEDICAL EXPENSES OF THE PLAINTIFF
16 WILL BE PAID OUT OF THE TRUST IN ACCORDANCE WITH TITLE 20, SUBTITLE 21 OF
17 THE HEALTH – GENERAL ARTICLE.

18 (II) 1. ON A FINDING BY THE COURT THAT THE APPLICANT
19 HAS MADE A PRIMA FACIE SHOWING THAT THE PLAINTIFF IS A QUALIFIED
20 PLAINTIFF, THE COURT SHALL ENSURE THAT THE JUDGMENT PROVIDES THAT THE
21 PLAINTIFF IS A QUALIFIED PLAINTIFF.

22 2. THE TRUST SHALL MAKE THE PRELIMINARY
23 DETERMINATION OF WHETHER THE PLAINTIFF IS A QUALIFIED PLAINTIFF, AND IF
24 THE PRELIMINARY DETERMINATION IS DISPUTED, THE OFFICE SHALL MAKE THE
25 FINAL DETERMINATION.

26 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, WITH
27 RESPECT TO A QUALIFIED PLAINTIFF:

28 (I) A PAYMENT MAY NOT BE REQUIRED TO BE MADE BY ANY
29 DEFENDANT OR DEFENDANT'S INSURER FOR FUTURE QUALIFYING HEALTH CARE
30 COSTS; AND

31 (II) A JUDGMENT MAY NOT BE MADE OR ENTERED REQUIRING
32 THAT ANY PAYMENT BE MADE BY ANY DEFENDANT OR DEFENDANT'S INSURER FOR
33 THE FUTURE QUALIFYING HEALTH CARE COSTS.

34 (B) (1) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE
35 QUALIFIED PLAINTIFF'S ATTORNEY'S FEE FOR THE TRUST ELEMENTS OF DAMAGES

1 SHALL BE PAID IN A LUMP SUM BY THE DEFENDANTS AND THEIR INSURERS.

2 **(2) THE QUALIFIED PLAINTIFF'S ATTORNEY'S FEE SHALL BE BASED**
3 **ON THE ENTIRE SUM AWARDED BY THE JURY OR THE COURT OR THE FULL SUM OF**
4 **THE SETTLEMENT.**

5 **(3) THE QUALIFIED PLAINTIFF'S ATTORNEY SHALL RECEIVE**
6 **PAYMENT FOR COURT AND WITNESS EXPENSES.**

7 **Article – Health – General**

8 19–207.

9 (b) In addition to the duties set forth elsewhere in this subtitle, the Commission
10 shall:

11 (1) Adopt rules and regulations that relate to its meetings, minutes, and
12 transactions;

13 (2) Keep minutes of each meeting;

14 (3) Prepare annually a budget proposal that includes the estimated income
15 of the Commission and proposed expenses for its administration and operation;

16 (4) Within a reasonable time after the end of each facility's fiscal year or
17 more often as the Commission determines, prepare from the information filed with the
18 Commission any summary, compilation, or other supplementary report that will advance
19 the purposes of this subtitle;

20 (5) Periodically participate in or do analyses and studies that relate to:

21 (i) Health care costs;

22 (ii) The financial status of any facility; or

23 (iii) Any other appropriate matter;

24 **(6) WITHIN A REASONABLE TIME AFTER THE END OF EACH FACILITY'S**
25 **FISCAL YEAR, FOR THE PURPOSE OF ASSESSING PREMIUMS UNDER § 20–2109 OF**
26 **THIS ARTICLE, STUDY AND MAKE AVAILABLE A PUBLIC REPORT ASSESSING THE**
27 **STATUS OF THE STATE'S HOSPITAL REINSURANCE MARKET AND THE COST OF**
28 **SELF-INSURANCE PROGRAMS, INCLUDING THE AVAILABILITY, ADEQUACY, AND**
29 **AFFORDABILITY OF REINSURANCE AND FACILITIES IN THE STATE;**

30 **[(6)] (7)** On or before October 1 of each year, submit to the Governor, to
31 the Secretary, and, subject to § 2–1257 of the State Government Article, to the General

1 Assembly an annual report on the operations and activities of the Commission during the
2 preceding fiscal year, including:

3 (i) A copy of each summary, compilation, and supplementary report
4 required by this subtitle;

5 (ii) Budget information regarding the Health Services Cost Review
6 Commission Fund, including:

7 1. Any balance remaining in the Fund at the end of the
8 previous fiscal year; and

9 2. The percentage of the total annual costs of the
10 Commission that is represented by the balance remaining in the Fund at the end of the
11 previous fiscal year;

12 (iii) A summary of the Commission's role in hospital quality of care
13 activities, including information about the status of any pay for performance initiatives;

14 (iv) An update on the status of the State's compliance with the
15 provisions of Maryland's all-payer model contract that includes the information specified
16 in item [(9)] (10) of this subsection; and

17 (v) Any other fact, suggestion, or policy recommendation that the
18 Commission considers necessary;

19 [(7)] (8) Oversee and administer the Maryland Trauma Physician
20 Services Fund in conjunction with the Maryland Health Care Commission;

21 [(8)] (9) In consultation with the Maryland Health Care Commission,
22 annually publish each acute care hospital's severity-adjusted average charge per case for
23 the 15 most common inpatient diagnosis-related groups;

24 [(9)] (10) Subject to item [(10)(ii)] (11)(II) of this subsection, on or before
25 May 1 each year, submit to the Governor, the Secretary, and, subject to § 2-1257 of the
26 State Government Article, the General Assembly an update on the status of the State's
27 compliance with the provisions of Maryland's all-payer model contract, including:

28 (i) The State's:

29 1. Performance in limiting inpatient and outpatient hospital
30 per capita cost growth for all payers to a trend based on the State's 10-year compound
31 annual gross State product;

32 2. Progress toward achieving aggregate savings in Medicare
33 spending in the State equal to or greater than \$330,000,000 over the 5 years of the contract,
34 based on lower increases in the cost per Medicare beneficiary;

3. Performance in shifting from a per-case rate system to a population-based revenue system, with at least 80% of hospital revenue shifted to global budgeting;

4. Performance in reducing the hospital readmission rate among Medicare beneficiaries to the national average; and

5. Progress toward achieving a cumulative reduction in the State hospital-acquired conditions of 30% over the 5 years of the contract;

(ii) A summary of the work conducted, recommendations made, and Commission action on recommendations made by any workgroup created to provide technical input and advice on implementation of Maryland's all-payer model contract;

(iii) Actions approved and considered by the Commission to promote alternative methods of rate determination and payment of an experimental nature, as authorized under § 19-219(c)(2) of this subtitle;

(iv) Reports submitted to the federal Center for Medicare and Medicaid Innovation relating to the all-payer model contract; and

(v) Any known adverse consequences that implementing the all-payer model contract has had on the State, including changes or indications of changes to quality or access to care, and the actions the Commission has taken to address and mitigate the consequences; and

[(10)] (11) If the Centers for Medicare and Medicaid Services issues a warning notice related to a "triggering event" as described in the all-payer model contract:

(i) Provide written notification to the Governor, the Secretary, and, subject to § 2-1257 of the State Government Article, the General Assembly within 15 days after the issuance of the notice; and

(ii) Submit the update required under item **[(9)] (10)** of this subsection every 3 months.

19-220.

(a) (1) To have the statistical information needed for rate review and approval, the Commission shall compile all relevant financial and accounting information.

(2) The information shall include:

(i) Necessary operating expenses;

(ii) Appropriate expenses that are incurred in providing services to

1 patients who cannot or do not pay;

2 (iii) Incurred interest charges; [and]

3 (iv) Reasonable depreciation expenses that are based on the expected
4 useful life of property or equipment; AND

5 (v) **FOR THE PURPOSE OF ASSESSING PREMIUMS UNDER §**
6 **20-2109 OF THIS ARTICLE, COSTS ASSOCIATED WITH MEDICAL LIABILITY,**
7 **INCLUDING THE COSTS ASSOCIATED WITH OBTAINING MEDICAL LIABILITY**
8 **INSURANCE.**

9 (3) **THE COMMISSION SHALL DEFINE, BY REGULATION, THE**
10 **METHODOLOGY USED TO ACCOUNT FOR COSTS ASSOCIATED WITH MEDICAL**
11 **LIABILITY IN THE RATE REVIEW PROCESS.**

12 19-223.

13 (A) The Commission shall assess a fee on all hospitals whose rates have been
14 approved by the Commission to pay for:

15 (1) To the extent provided for in Title 10, Subtitle 3, Part IV of the
16 Economic Development Article, the amounts required by § 10-350 of the Economic
17 Development Article with respect to public obligations or closure costs of a closed or
18 delicensed hospital; and

19 (2) Funding the Hospital Employees Retraining Fund.

20 (B) **THE COMMISSION SHALL ASSESS A FEE ON ALL HOSPITALS THAT**
21 **CHARGE FOR ACUTE OBSTETRICS, NEONATAL INTENSIVE CARE UNIT, NEWBORN**
22 **NURSERY, PREMATURE NURSERY, NORMAL NEWBORN, OR LABOR AND DELIVERY**
23 **SERVICES WHOSE RATES HAVE BEEN APPROVED BY THE COMMISSION TO PAY FOR**
24 **THE AMOUNTS REQUIRED UNDER § 20-2109 OF THIS ARTICLE REGARDING THE**
25 **FUNDING OF THE MARYLAND INFANT LIFETIME CARE TRUST.**

26 **SUBTITLE 20. BIRTH-RELATED INJURY PREVENTION.**

27 **20-2001.**

28 (A) **IN THIS SECTION, “BOARD” MEANS THE BOARD OF TRUSTEES FOR THE**
29 **MARYLAND INFANT LIFETIME CARE TRUST.**

30 (B) **THE BOARD SHALL ALLOCATE A GRANT OF \$1,000,000 EACH YEAR TO**
31 **THE DEPARTMENT TO STUDY AND ADDRESS DISPARITIES IN AND IMPROVE**
32 **MATERNAL AND FETAL OUTCOMES ACROSS THE STATE.**

(C) (1) THE MARYLAND PATIENT SAFETY CENTER SHALL CONVENE A PERINATAL CLINICAL ADVISORY COMMITTEE TO OVERSEE THE GENERAL DISSEMINATION OF INITIATIVES, GUIDANCE, AND BEST PRACTICES TO HEALTH CARE FACILITIES FOR PERINATAL CARE.

(2) THE PERINATAL CLINICAL ADVISORY COMMITTEE SHALL:

(I) UNDERTAKE A BROAD REVIEW OF THE MARYLAND INFANT LIFETIME CARE TRUST CLAIMS PROCESS AND OTHER DATA AVAILABLE TO THE DEPARTMENT;

(II) FORMULATE BEST PRACTICES STANDARDS FOR PRENATAL CARE AND DELIVERIES IN THE STATE; AND

(III) DEVELOP AND IMPLEMENT PROGRAMS TO IMPROVE OBSTETRICAL CARE OUTCOMES.

(3) THE MARYLAND PATIENT SAFETY CENTER SHALL REPORT ANNUALLY TO THE BOARD AND THE DEPARTMENT.

(D) (1) THE DEPARTMENT SHALL ALLOCATE FUNDING EACH YEAR FROM THE GRANT UNDER SUBSECTION (B) OF THIS SECTION TO THE MARYLAND PATIENT SAFETY CENTER FOR THE STAFFING OF THE PERINATAL CLINICAL ADVISORY COMMITTEE AND PROGRAM ACTIVITIES.

(2) FUNDING FOR THE PERINATAL CLINICAL ADVISORY COMMITTEE SHALL BE APPORTIONED FROM THE GRANT FROM THE BOARD.

(E) THE DEPARTMENT SHALL REPORT ANNUALLY TO THE BOARD ON THE USE OF THE GRANT AND THE STATUS OF MATERNAL AND FETAL OUTCOMES.

SUBTITLE 21. MARYLAND INFANT LIFETIME CARE TRUST.

20–2101.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) “BIRTH–RELATED NEUROLOGICAL INJURY” MEANS AN INJURY TO THE BRAIN OR SPINAL CORD OF A LIVE INFANT BORN IN A HOSPITAL IN THE STATE THAT:

1 (I) IS CAUSED BY OXYGEN DEPRIVATION OR ANY OTHER
2 INJURY THAT OCCURRED OR COULD HAVE OCCURRED DURING LABOR, DURING
3 DELIVERY, OR IN THE RESUSCITATIVE PERIOD AFTER DELIVERY; AND

4 (II) RENDERS THE INFANT PERMANENTLY NEUROLOGICALLY
5 AND PHYSICALLY IMPAIRED.

6 (2) “BIRTH-RELATED NEUROLOGICAL INJURY” DOES NOT INCLUDE
7 DISABILITY OR DEATH CAUSED BY GENETIC OR CONGENITAL ABNORMALITY.

8 (C) “BOARD” MEANS THE BOARD OF TRUSTEES FOR THE TRUST.

9 (D) “CLAIMANT” MEANS AN INJURED INDIVIDUAL, OR A PERSON
10 AUTHORIZED TO ACT ON BEHALF OF AN INJURED INDIVIDUAL, WHO ASSERTS A
11 CLAIM AGAINST A HEALTH CARE PRACTITIONER OR HOSPITAL FOR INJURIES
12 ARISING FROM HEALTH CARE SERVICES PROVIDED IN CONNECTION WITH THE
13 INJURED INDIVIDUAL’S BIRTH, INCLUDING SERVICES PROVIDED DURING LABOR,
14 DELIVERY, OR THE RESUSCITATIVE PERIOD AFTER DELIVERY.

15 (E) “COMMISSION” MEANS THE STATE HEALTH SERVICES COST REVIEW
16 COMMISSION ESTABLISHED UNDER § 19–202 OF THIS ARTICLE.

17 (F) “HEALTH CARE PRACTITIONER” MEANS AN INDIVIDUAL LICENSED OR
18 CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE AND WHOSE SCOPE OF
19 PRACTICE INCLUDES THE PROVISION OF OBSTETRICAL SERVICES OR THE PRACTICE
20 OF MIDWIFERY.

21 (G) “HOSPITAL” HAS THE MEANING STATED IN § 19–301 OF THIS ARTICLE.

22 (H) “OFFICE” MEANS THE OFFICE OF ADMINISTRATIVE HEARINGS.

23 (I) “PARTY” MEANS A CLAIMANT AND ANY PERSON WHO WAS A PARTY TO A
24 SETTLEMENT AGREEMENT WITH, OR A CIVIL ACTION BROUGHT BY, THE CLAIMANT
25 CONCERNING INJURIES TO THE CLAIMANT ARISING FROM HEALTH CARE SERVICES
26 PROVIDED IN CONNECTION WITH THE CLAIMANT’S OR AN INJURED INDIVIDUAL’S
27 BIRTH, INCLUDING SERVICES PROVIDED DURING LABOR, DELIVERY, OR THE
28 RESUSCITATIVE PERIOD AFTER DELIVERY.

29 (J) “PHYSICIAN” MEANS AN INDIVIDUAL:

30 (1) LICENSED TO PRACTICE MEDICINE IN THE STATE; OR

31 (2) WHO LEGALLY PRACTICES MEDICINE WITHOUT A LICENSE UNDER

§ 14-302(1), (2), (3), OR (4) OF THE HEALTH OCCUPATIONS ARTICLE.

(K) “PREMIUM” MEANS THE ANNUAL ASSESSMENT PAID BY HOSPITALS IN ACCORDANCE WITH § 20-2109 OF THIS SUBTITLE.

(L) “QUALIFIED PLAINTIFF” MEANS AN INDIVIDUAL WHO HAS BEEN DETERMINED UNDER THIS SUBTITLE TO HAVE SUSTAINED A BIRTH-RELATED NEUROLOGICAL INJURY IN THE STATE THAT QUALIFIES FOR PAYMENT FROM THE TRUST, OR A PERSON AUTHORIZED TO ACT ON BEHALF OF THE INJURED INDIVIDUAL.

(M) (1) “QUALIFYING HEALTH CARE COSTS” MEANS REASONABLE EXPENSES OF MEDICAL, HOSPITAL, AND REHABILITATIVE CARE, FAMILY RESIDENTIAL SERVICES, CUSTODIAL CARE, PROFESSIONAL RESIDENTIAL CARE, DURABLE MEDICAL EQUIPMENT, ASSISTIVE TECHNOLOGY, MEDICALLY NECESSARY DRUGS, AND RELATED TRAVEL, AND RESIDENTIAL OR VEHICLE MODIFICATIONS THAT ARE NECESSARY TO MEET THE QUALIFIED PLAINTIFF’S HEALTH CARE NEEDS AS DETERMINED BY THE QUALIFIED PLAINTIFF’S TREATING PHYSICIANS, PHYSICIAN ASSISTANTS, OR NURSE PRACTITIONERS, AND AS OTHERWISE DEFINED BY STATUTE OR REGULATION.

(2) “QUALIFYING HEALTH CARE COSTS” INCLUDES SERVICES THAT ARE NOT MEDICAL IN NATURE BUT ARE SUPPORTIVE OF A PLAN OF CARE FOR THE QUALIFIED PLAINTIFF.

(N) “TRUST” MEANS THE MARYLAND INFANT LIFETIME CARE TRUST.

(O) “TRUST ADMINISTRATOR” MEANS THE EXECUTIVE ADMINISTRATOR OF THE TRUST.

20-2102.

(A) THE GENERAL ASSEMBLY FINDS THAT:

(1) BIRTH-RELATED NEUROLOGICAL INJURIES ARE AMONG THE MOST COSTLY AND DEVASTATING TYPES OF MEDICAL INJURIES AND WARRANT THE ESTABLISHMENT OF A RELIABLE SYSTEM THAT WILL ENSURE THAT NECESSARY HEALTH CARE BENEFITS ARE AVAILABLE TO QUALIFIED PLAINTIFFS FOR THEIR ENTIRE LIVES;

(2) BIRTHS RESULTING IN NEUROLOGICAL INJURIES SOMETIMES LEAD TO CLAIMS AGAINST THE HOSPITAL WHERE THE BIRTHS OCCURRED AND THE HEALTH CARE PRACTITIONERS INVOLVED AND, CONSEQUENTLY, THOSE HOSPITALS

1 AND HEALTH CARE PRACTITIONERS ARE MOST SEVERELY AFFECTED BY MEDICAL
2 LIABILITY RISK AND ASSOCIATED COSTS; AND

3 (3) BECAUSE OBSTETRIC SERVICES ARE ESSENTIAL TO THE STATE'S
4 COMMUNITIES, IT IS INCUMBENT ON THE GENERAL ASSEMBLY TO PROVIDE A PLAN
5 DESIGNED TO RESULT IN THE STABILIZATION AND REDUCTION OF MEDICAL
6 LIABILITY RISK AND ASSOCIATED COSTS IN ORDER TO PRESERVE ACCESS TO
7 OBSTETRIC SERVICES IN THE STATE.

8 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO:

9 (1) PROVIDE COMPENSATION FOR A LIMITED CLASS OF CASES OF
10 BIRTH-RELATED INJURIES THAT RESULT IN UNUSUALLY HIGH COSTS FOR
11 CUSTODIAL CARE AND REHABILITATION; AND

12 (2) REDUCE THE OCCURRENCE OF THOSE CASES BY STUDYING TRUST
13 CLAIMS AND OTHER DATA TO DEVELOP BEST PRACTICES IN PERINATAL CARE.

14 20-2103.

15 (A) THERE IS A MARYLAND INFANT LIFETIME CARE TRUST.

16 (B) THE PURPOSE OF THE TRUST IS TO PROVIDE COMPENSATION AND
17 BENEFITS TO ELIGIBLE CLAIMANTS UNDER TITLE 3, SUBTITLE 2D OF THE COURTS
18 ARTICLE.

19 (C) THE TRUST IS AUTHORIZED TO:

20 (1) RECEIVE PREMIUMS COLLECTED UNDER § 20-2109 OF THIS
21 SUBTITLE;

22 (2) ADMINISTER THE PAYMENT OF AWARDS UNDER TITLE 3,
23 SUBTITLE 2D OF THE COURTS ARTICLE;

24 (3) INVEST AND REINVEST SURPLUS MONEY OVER LOSSES AND
25 EXPENSES AS SET FORTH IN § 20-2108 OF THIS SUBTITLE;

26 (4) REINSURE THE RISKS OF THE TRUST WHOLLY OR PARTLY;

27 (5) EMPLOY OR RETAIN PERSONS AS NECESSARY TO PERFORM THE
28 ADMINISTRATIVE AND FINANCIAL TRANSACTIONS AND ANY OTHER NECESSARY AND
29 PROPER FUNCTIONS NOT PROHIBITED BY LAW;

1 **(6) ENTER INTO CONTRACTS AS NECESSARY OR PROPER TO CARRY**
2 **OUT THE LEGAL AND PROPER BUSINESS OF THE TRUST; AND**

3 **(7) SUBJECT TO SUBSECTION (D) OF THIS SECTION, REQUIRE AN**
4 **UNINSURED QUALIFIED PLAINTIFF TO OBTAIN PRIVATE HEALTH INSURANCE.**

5 **(D) THE TRUST MAY REQUIRE AN UNINSURED QUALIFIED PLAINTIFF TO**
6 **OBTAIN PRIVATE HEALTH INSURANCE ONLY IF:**

7 **(1) THE TRUST DETERMINES THROUGH A COMPARATIVE ANALYSIS**
8 **OF COSTS THAT REQUIRING THE UNINSURED QUALIFIED PLAINTIFF TO OBTAIN**
9 **PRIVATE HEALTH INSURANCE IS MORE COST EFFECTIVE THAN AWARDED PAYMENT**
10 **FROM THE TRUST;**

11 **(2) THE TRUST PAYS THE PREMIUMS OR OTHER COSTS OF THE**
12 **PRIVATE HEALTH INSURANCE; AND**

13 **(3) THE INSURANCE WILL BE USED TO PROVIDE COVERAGE FOR THE**
14 **QUALIFIED PLAINTIFF'S HEALTH CARE.**

15 **20-2104.**

16 **(A) THERE IS A BOARD OF TRUSTEES FOR THE TRUST.**

17 **(B) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS APPOINTED BY**
18 **THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE:**

19 **(1) ONE OBSTETRICIAN;**

20 **(2) ONE PEDIATRIC NEUROLOGIST;**

21 **(3) ONE REPRESENTATIVE NOMINATED BY THE MARYLAND**
22 **HOSPITAL ASSOCIATION;**

23 **(4) ONE ATTORNEY;**

24 **(5) TWO MEMBERS OF THE PUBLIC; AND**

25 **(6) ONE EXPERT IN DISABILITY CARE.**

26 **(C) (1) EACH MEMBER MUST BE A RESIDENT OF THE STATE.**

27 **(2) IN APPOINTING MEMBERS, THE GOVERNOR, TO THE EXTENT**

1 PRACTICABLE, SHALL CONSIDER THE GEOGRAPHIC AND DEMOGRAPHIC DIVERSITY
2 OF THE STATE, INCLUDING RACE AND GENDER.

3 (D) BEFORE TAKING OFFICE, EACH APPOINTEE TO THE BOARD SHALL TAKE
4 THE OATH REQUIRED BY ARTICLE I, § 9 OF THE MARYLAND CONSTITUTION.

5 (E) (1) THE TERM OF A MEMBER IS 5 YEARS.

6 (2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE
7 TERMS PROVIDED FOR MEMBERS OF THE BOARD ON JULY 1, 2020.

8 (3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL
9 A SUCCESSOR IS APPOINTED AND QUALIFIES.

10 (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES
11 ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND
12 QUALIFIES.

13 (5) A MEMBER MAY NOT SERVE FOR MORE THAN A TOTAL OF 10
14 YEARS.

15 (6) IF A MEMBER OF THE BOARD CEASES TO BE A MEMBER OF THE
16 BOARD, THE GOVERNOR SHALL APPOINT A SUCCESSOR FOR THE UNEXPIRED TERM.

17 (F) THE BOARD SHALL CHOOSE A CHAIR FROM AMONG ITS MEMBERS.

18 (G) EACH MEMBER OF THE BOARD IS ENTITLED TO:

19 (1) REASONABLE PER DIEM COMPENSATION FOR EACH DAY
20 ACTUALLY ENGAGED IN THE DISCHARGE OF TRUST DUTIES; AND

21 (2) REIMBURSEMENT FOR REASONABLE EXPENSES.

22 (H) THE BOARD:

23 (1) SHALL ADOPT RULES, BYLAWS, AND PROCEDURES; AND

24 (2) MAY ADOPT ANY POLICY TO CARRY OUT THIS SUBTITLE.

25 20-2105.

26 (A) (1) THE BOARD SHALL APPOINT THE TRUST ADMINISTRATOR OF THE
27 TRUST.

1 **(2) THE TRUST ADMINISTRATOR SERVES AT THE PLEASURE OF THE**
2 **BOARD.**

3 **(3) IF THE BOARD FAILS TO AGREE ON A SUCCESSOR TRUST**
4 **ADMINISTRATOR, THE GOVERNOR SHALL APPOINT THE SUCCESSOR.**

5 **(B) (1) THE TRUST ADMINISTRATOR:**

6 **(I) IS THE ADMINISTRATIVE HEAD OF THE TRUST; AND**

7 **(II) SHALL EXERCISE THE POWERS AND PERFORM THE DUTIES**
8 **CONFERRED ON THE TRUST UNDER THIS SUBTITLE EXCEPT FOR THE POWERS AND**
9 **DUTIES CONFERRED ON THE BOARD.**

10 **(2) THE BOARD SHALL ADVISE THE TRUST ADMINISTRATOR ON THE**
11 **EXERCISE OF THE POWERS AND DUTIES CONFERRED ON THE TRUST**
12 **ADMINISTRATOR UNDER THIS SUBTITLE.**

13 **(C) THE BOARD SHALL DETERMINE THE COMPENSATION OF THE TRUST**
14 **ADMINISTRATOR.**

15 **20-2106.**

16 **(A) (1) EMPLOYEES OF THE TRUST ARE NOT STATE EMPLOYEES AND ARE**
17 **NOT IN THE STATE PERSONNEL MANAGEMENT SYSTEM.**

18 **(2) THE TRUST ADMINISTRATOR SHALL APPOINT AND REMOVE**
19 **EMPLOYEES OF THE TRUST IN ACCORDANCE WITH THE POLICIES OF THE BOARD.**

20 **(B) THE TRUST ADMINISTRATOR SHALL DETERMINE AND ADMINISTER THE**
21 **COMPENSATION OF THE EMPLOYEES OF THE TRUST WITH THE APPROVAL OF THE**
22 **BOARD.**

23 **(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, AN EMPLOYEE OF**
24 **THE TRUST IS NOT SUBJECT TO ANY LAW, REGULATION, OR EXECUTIVE ORDER**
25 **GOVERNING STATE EMPLOYEE COMPENSATION, INCLUDING FURLOUGHS, SALARY**
26 **REDUCTIONS, AND OTHER GENERAL FUND COST-SAVING MEASURES.**

27 **20-2107.**

28 **(A) MONEY OF THE TRUST CONSISTS OF REVENUES, PREMIUMS, AND**
29 **OTHER RECEIPTS PROVIDED BY LAW.**

1 **(B) (1) ALL OPERATING EXPENSES OF THE TRUST SHALL BE PAID FROM**
2 **THE MONEY COLLECTED BY OR FOR THE TRUST.**

3 **(2) MONEY AND PROPERTY AVAILABLE TO THE TRUST MAY BE USED**
4 **FOR THE GENERAL PURPOSES OF THE TRUST, INCLUDING FOR THE PAYMENT OF**
5 **AWARDS ARISING UNDER TITLE 3, SUBTITLE 2D OF THE COURTS ARTICLE AND FOR**
6 **THE ADMINISTRATIVE EXPENSES OF THE TRUST.**

7 **(C) (1) THE TRUST SHALL PROVIDE TO EACH HOSPITAL IN THE STATE**
8 **AND TO EACH OBSTETRICIAN PRACTICING IN THE STATE WRITTEN MATERIALS**
9 **CONTAINING INFORMATION ABOUT THE TRUST FOR DISTRIBUTION TO**
10 **OBSTETRICAL PATIENTS.**

11 **(2) THE INFORMATION SHALL INCLUDE A CLEAR AND CONCISE**
12 **EXPLANATION OF A PATIENT'S RIGHTS, REMEDIES, AND LIMITATIONS UNDER THE**
13 **TRUST.**

14 **(D) THE FUNDS IN THE TRUST MAY BE USED ONLY IN ACCORDANCE WITH**
15 **THE PROVISIONS OF THIS SUBTITLE.**

16 **20-2108.**

17 **(A) THE ASSETS OF THE TRUST ARE NOT PART OF THE STATE TREASURY.**

18 **(B) A DEBT OR AN OBLIGATION OF THE TRUST IS NOT A DEBT OF THE STATE**
19 **OR A PLEDGE OF CREDIT OF THE STATE.**

20 **(C) IN ACCORDANCE WITH ACTUARIAL ESTIMATES, WHEN THE AMOUNT OF**
21 **MONEY IN THE TRUST EXCEEDS THE AMOUNT THAT THE TRUST ADMINISTRATOR**
22 **BELIEVES IS LIKELY TO BE REQUIRED DURING A FISCAL YEAR, THE BOARD MAY**
23 **MANAGE THE EXCESS AS THE BOARD CONSIDERS APPROPRIATE AND INVEST THE**
24 **EXCESS IN INVESTMENTS LEGAL FOR CASUALTY INSURERS UNDER §§ 5-601**
25 **THROUGH 5-609 OF THE INSURANCE ARTICLE.**

26 **(D) (1) EACH FISCAL YEAR, THE TRUST SHALL ENGAGE AN INDEPENDENT**
27 **CERTIFIED PUBLIC ACCOUNTANT TO AUDIT THE ACCOUNTS OF THE TRUST.**

28 **(2) THE COST OF THE AUDIT SERVICES SHALL BE:**

29 **(I) BORNE BY THE TRUST; AND**

30 **(II) PAID FROM MONEY DESIGNATED FOR SUCH PURPOSES IN**

1 THE TRUST.

2 (3) THE AUDIT SHALL:

3 (I) BE PERFORMED EACH FISCAL YEAR IN ACCORDANCE WITH
4 GENERALLY ACCEPTED AUDITING STANDARDS; AND

5 (II) INCLUDE TESTS OF THE ACCOUNTING RECORDS AND
6 AUDITING PROCEDURES, AS CONSIDERED NECESSARY.

7 (4) THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT SHALL
8 PREPARE A REPORT SUMMARIZING ITS FINDINGS.

9 (5) THE TRUST SHALL DISCLOSE THE ANNUAL AUDIT REPORT TO THE
10 PUBLIC.

11 (E) (1) EACH FISCAL YEAR, THE TRUST SHALL ENGAGE A QUALIFIED
12 ACTUARY WHO IS A MEMBER OF THE AMERICAN ACADEMY OF ACTUARIES.

13 (2) THE ACTUARY SHALL:

14 (I) REVIEW THE TRUST'S ASSETS AND LIABILITIES;

15 (II) EXAMINE THE ADEQUACY OF THE TRUST'S ASSETS; AND

16 (III) PRODUCE AND PROVIDE A STATEMENT OF ACTUARIAL
17 OPINION CONCERNING THE VALUATION OF THE TRUST'S ASSETS AND LIABILITIES
18 AND THE ADEQUACY OF THE ASSETS.

19 (3) THE BOARD SHALL DISCLOSE THE STATEMENT OF ACTUARIAL
20 OPINION REQUIRED UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION TO THE
21 PUBLIC.

22 20-2109.

23 (A) FOR EACH FISCAL YEAR, BASED ON THE ANNUAL STATEMENT OF
24 ACTUARIAL OPINION, THE BOARD SHALL:

25 (1) DETERMINE THE AMOUNT REQUIRED TO FINANCE AND
26 ADMINISTER THE TRUST; AND

27 (2) PROVIDE NOTICE OF THE AMOUNT TO THE COMMISSION ON OR
28 BEFORE MARCH 1 EACH YEAR.

1 **(B) (1) ON OR BEFORE THE BEGINNING OF EACH FISCAL YEAR, THE**
2 **COMMISSION SHALL:**

3 **(I) ASSESS PREMIUMS ONLY FOR THOSE HOSPITALS THAT**
4 **CHARGE FOR ACUTE OBSTETRICS, NEONATAL ICU, NEWBORN NURSERY,**
5 **PREMATURE NURSERY, NORMAL NEWBORN, OR LABOR AND DELIVERY SERVICES;**

6 **(II) INCREASE HOSPITAL RATES ONLY FOR ACUTE OBSTETRICS,**
7 **NEONATAL ICU, NEWBORN NURSERY, PREMATURE NURSERY, NORMAL NEWBORN,**
8 **AND LABOR AND DELIVERY SERVICES BY AN AMOUNT THAT WILL BE SUFFICIENT TO**
9 **FINANCE AND ADMINISTER THE TRUST FOR THE UPCOMING FISCAL YEAR NOT TO**
10 **EXCEED \$40,000,000, AS REASONABLY DETERMINED BY THE BOARD; AND**

11 **(III) COLLECT FROM HOSPITALS THAT CHARGE FOR ACUTE**
12 **OBSTETRICS, NEONATAL ICU, NEWBORN NURSERY, PREMATURE NURSERY,**
13 **NORMAL NEWBORN, OR LABOR AND DELIVERY SERVICES THE AMOUNT NEEDED TO**
14 **SUFFICIENTLY FINANCE AND ADMINISTER THE TRUST.**

15 **(2) (I) THE COMMISSION SHALL ADOPT REGULATIONS THAT**
16 **SPECIFY THE METHODOLOGY FOR THE ASSESSMENT OF PREMIUMS.**

17 **(II) THE COMMISSION'S ASSESSMENT METHODOLOGY SHALL:**

18 1. **ACCOUNT FOR GEOGRAPHIC DIFFERENCES AMONG**
19 **HOSPITALS;**

20 2. **ACCOUNT FOR DIFFERENCES AMONG HOSPITALS'**
21 **HISTORICAL CLAIMS EXPERIENCE INVOLVING BIRTHS IN EACH HOSPITAL; AND**

22 3. **ONLY ASSESS PREMIUMS TO HOSPITALS THAT**
23 **CHARGE FOR ACUTE OBSTETRICS, NEONATAL ICU, NEWBORN NURSERY,**
24 **PREMATURE NURSERY, NORMAL NEWBORN, OR LABOR AND DELIVERY SERVICES.**

25 **(III) 1. IN DETERMINING HOSPITAL RATES UNDER TITLE 19,**
26 **SUBTITLE 2 OF THIS ARTICLE, THE COMMISSION SHALL INCREASE RATES TO**
27 **ACCOUNT FOR THE AMOUNT OF THE PREMIUMS.**

28 2. **THE INCREASE TO RATES REQUIRED UNDER**
29 **SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT BE CONSIDERED IN**
30 **DETERMINING THE REASONABLENESS OF RATES OR HOSPITAL FINANCIAL**
31 **PERFORMANCE UNDER COMMISSION METHODOLOGIES.**

(C) (1) ON OR BEFORE SEPTEMBER 1 EACH YEAR, EACH HOSPITAL ASSESSED WITH PREMIUMS UNDER THIS SECTION SHALL PAY THE PREMIUM AMOUNTS TO THE COMMISSION.

(2) THE COMMISSION SHALL COLLECT THE PREMIUM AMOUNTS FROM HOSPITALS AND PAY THE PREMIUM AMOUNTS TO THE TRUST FOR THE PURPOSES OF THIS SUBTITLE.

20-2110.

(A) THE BENEFITS AND COMPENSATION PROVIDED BY THE TRUST APPLY ONLY TO INJURIES CAUSED IN RELATION TO BIRTHS OCCURRING ON OR AFTER JANUARY 1, 2021.

(B) (1) FOR CLAIMS ARISING OUT OF A BIRTH-RELATED NEUROLOGICAL INJURY, ALL CLAIMS FOR THE PAYMENT OF FUTURE MEDICAL EXPENSES FOR A QUALIFIED PLAINTIFF SHALL BE PAID IN ACCORDANCE WITH THIS SUBTITLE.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, THE TRUST SHALL BE USED ONLY TO PAY THE QUALIFYING HEALTH CARE COSTS OF QUALIFIED PLAINTIFFS.

20-2111.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A QUALIFIED PLAINTIFF SHALL BE ELIGIBLE FOR ONE OR MORE OF THE FOLLOWING BENEFITS AND COMPENSATION TO BE PAID AND PROVIDED FROM THE TRUST:

(1) ACTUAL LIFETIME EXPENSES FOR QUALIFYING HEALTH CARE COSTS, LIMITED TO REASONABLE CHARGES PREVAILING IN THE SAME COMMUNITY FOR SIMILAR TREATMENT OF INJURED INDIVIDUALS WHEN THE TREATMENT IS PAID FOR BY THE INJURED INDIVIDUAL; AND

(2) REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE ADJUDICATION OF ANY DISPUTED MATTERS UNDER THIS SUBTITLE.

(B) THE ACTUAL LIFETIME EXPENSES WITH RESPECT TO WHICH A QUALIFIED PLAINTIFF IS ELIGIBLE FOR BENEFITS AND COMPENSATION DO NOT INCLUDE:

(1) EXPENSES FOR ITEMS OR SERVICES THAT THE CLAIMANT HAS RECEIVED UNDER FEDERAL OR STATE LAWS, EXCEPT TO THE EXTENT THAT THE EXCLUSIONS ARE PROHIBITED BY LAW;

1 (2) EXPENSES FOR ITEMS OR SERVICES THAT THE CLAIMANT HAS
2 RECEIVED, OR IS CONTRACTUALLY ENTITLED TO RECEIVE, FROM A PREPAID
3 HEALTH PLAN, A HEALTH MAINTENANCE ORGANIZATION, OR ANY OTHER PRIVATE
4 INSURING ENTITY;

5 (3) EXPENSES FOR WHICH THE CLAIMANT HAS RECEIVED
6 REIMBURSEMENT, OR FOR WHICH THE CLAIMANT IS CONTRACTUALLY ENTITLED TO
7 RECEIVE REIMBURSEMENT, UNDER THE PROVISIONS OF A HEALTH OR SICKNESS
8 INSURANCE POLICY OR ANY OTHER PRIVATE INSURANCE PROGRAM; AND

9 (4) EXPENSES RELATED TO THE PROVISION OF HOUSING, EXCEPT
10 FOR THE MODIFICATION OF RESIDENTIAL ENVIRONMENT.

11 20-2112.

12 (A) A CLAIMANT SHALL BE ENROLLED IN THE TRUST AS A QUALIFIED
13 PLAINTIFF IF:

14 (1) ANY PARTY TO THE ACTION OR PERSON AUTHORIZED TO ACT ON
15 BEHALF OF THE PARTY APPLIES FOR ENROLLMENT OF THE CLAIMANT IN THE TRUST
16 BY PROVIDING THE TRUST WITH A CERTIFIED COPY OF THE JUDGMENT OR THE
17 COURT-APPROVED SETTLEMENT AGREEMENT;

18 (2) THE PARTY OR PERSON AUTHORIZED TO ACT ON BEHALF OF THE
19 PARTY SEEKING THE CLAIMANT'S ENROLLMENT PROVIDES NOTICE TO ALL PARTIES
20 OF THE APPLICATION FOR ENROLLMENT; AND

21 (3) A FINAL DETERMINATION THAT THE CLAIMANT IS A QUALIFIED
22 PLAINTIFF HAS BEEN MADE ON THE BASIS OF THE JUDGMENT OR SETTLEMENT
23 AGREEMENT AND ANY ADDITIONAL INFORMATION THE TRUST REQUESTS.

24 (B) (1) THE TRUST SHALL MAKE THE PRELIMINARY DETERMINATION AS
25 TO WHETHER A CLAIMANT IS A QUALIFIED PLAINTIFF.

26 (2) IF THE TRUST'S PRELIMINARY DETERMINATION IS DISPUTED BY
27 ANY PARTY, THE FINAL DETERMINATION SHALL BE MADE BY THE OFFICE.

28 (3) THE TRUST SHALL PROVIDE WRITTEN NOTICE OF THE
29 PRELIMINARY DETERMINATION TO THE PARTIES.

30 (C) (1) THE TRUST SHALL MAKE THE PRELIMINARY DETERMINATION AS
31 TO WHETHER A COST IS A QUALIFYING HEALTH CARE COST TO BE PAID FROM THE

1 TRUST.

2 (2) A HEALTH CARE COST THAT A QUALIFIED PLAINTIFF'S TREATING
3 PHYSICIAN, PHYSICIAN'S ASSISTANT, OR NURSE PRACTITIONER DETERMINES TO BE
4 REASONABLE AND NECESSARY IS PRESUMED TO BE A QUALIFYING HEALTH CARE
5 COST UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE COST IS NOT
6 A QUALIFYING HEALTH CARE COST.

7 (3) IF THE TRUST'S PRELIMINARY DETERMINATION IS DISPUTED BY
8 ANY PARTY, THE FINAL DETERMINATION SHALL BE MADE BY THE OFFICE.

9 (4) THE TRUST SHALL PROVIDE WRITTEN NOTICE OF THE
10 PRELIMINARY DETERMINATION TO THE PARTIES.

11 (D) (1) PROMPTLY FOLLOWING A PRELIMINARY DETERMINATION BY THE
12 TRUST THAT A COST IS A QUALIFYING HEALTH CARE COST TO BE PAID FROM THE
13 TRUST, THE TRUST SHALL PAY THE QUALIFIED PLAINTIFF'S HEALTH CARE
14 PROVIDER OR REIMBURSE THE QUALIFIED PLAINTIFF THE AMOUNT CERTIFIED FOR
15 PAYMENT.

16 (2) FOR PURPOSES OF THIS SUBTITLE, THE PLAINTIFF'S HEALTH
17 CARE PROVIDER SHALL BE REIMBURSED AT AN AMOUNT NOT LESS THAN 130% OF
18 THE MEDICAID RATE OF REIMBURSEMENT.

19 (E) IN DETERMINING THE AMOUNT OF QUALIFYING HEALTH CARE COSTS TO
20 BE PAID FROM THE TRUST, ANY COST OR EXPENSE THAT WAS, OR WILL WITH
21 REASONABLE CERTAINTY, BE PAID, REPLACED, OR INDEMNIFIED FROM ANY
22 COLLATERAL SOURCE, NOT INCLUDING MEDICARE OR MEDICAID, MAY NOT BE
23 CONSIDERED A QUALIFYING HEALTH CARE COST AND MAY NOT BE PAID FROM THE
24 TRUST.

25 (F) ALL HEALTH CARE PROVIDERS SHALL ACCEPT FROM QUALIFIED
26 PLAINTIFFS OR PERSONS AUTHORIZED TO ACT ON BEHALF OF QUALIFIED
27 PLAINTIFFS ASSIGNMENTS OF THE RIGHT TO RECEIVE PAYMENTS FROM THE TRUST
28 FOR QUALIFYING HEALTH CARE COSTS.

29 (G) (1) HEALTH INSURERS, OTHER THAN MEDICARE OR MEDICAID,
30 SHALL BE THE PRIMARY PAYERS OF QUALIFYING HEALTH CARE COSTS OF
31 QUALIFIED PLAINTIFFS.

32 (2) QUALIFYING HEALTH CARE COSTS SHALL BE PAID FROM THE
33 TRUST ONLY TO THE EXTENT THAT HEALTH INSURERS OR OTHER COLLATERAL
34 SOURCES, NOT INCLUDING MEDICARE OR MEDICAID, OR OTHER PERSONS ARE NOT

1 OTHERWISE OBLIGATED TO MAKE PAYMENTS.

2 (3) (I) HEALTH INSURERS THAT MAKE PAYMENTS FOR
3 QUALIFYING HEALTH CARE COSTS TO OR ON BEHALF OF QUALIFIED PLAINTIFFS DO
4 NOT HAVE A RIGHT OF RECOVERY AGAINST AND MAY NOT HAVE A LIEN ON THE
5 TRUST OR ANY OTHER PERSON.

6 (II) THE TRUST MAY NOT BE CONSIDERED AN ADDITIONAL
7 PAYMENT SOURCE TO OFFSET THE PAYMENTS OTHERWISE CONTRACTUALLY
8 REQUIRED TO BE MADE BY THE HEALTH INSURERS THAT MAKE PAYMENTS FOR
9 QUALIFYING HEALTH CARE COSTS TO OR ON BEHALF OF QUALIFIED PLAINTIFFS.

10 (H) THE QUALIFIED PLAINTIFF'S ATTORNEY'S FEES:

11 (1) MAY NOT BE PAID FROM THE TRUST; AND

12 (2) SHALL BE PAID BY DEFENDANTS AND THEIR INSURERS AS
13 REQUIRED UNDER § 3-2D-02 OF THE COURTS ARTICLE.

14 20-2113.

15 (A) (1) IF ANY PRELIMINARY DETERMINATION MADE BY THE TRUST IS
16 DISPUTED IN WRITING BY A PARTY WITHIN 30 DAYS AFTER NOTICE OF THE
17 PRELIMINARY DETERMINATION IS RECEIVED, THE TRUST SHALL REFER THE
18 DISPUTE TO THE OFFICE FOR ADJUDICATION AND FINAL DETERMINATION BY AN
19 ADMINISTRATIVE LAW JUDGE.

20 (2) IF A PRELIMINARY DETERMINATION MADE BY THE TRUST IS NOT
21 DISPUTED IN WRITING BY ANY PARTY WITHIN 30 DAYS AFTER THE NOTICE OF THE
22 PRELIMINARY DETERMINATION IS RECEIVED, THE PRELIMINARY DETERMINATION
23 SHALL BE A FINAL DETERMINATION.

24 (B) THE OFFICE SHALL PROVIDE SPECIALIZED TRAINING TO
25 ADMINISTRATIVE LAW JUDGES WHO ARE ASSIGNED TO ADJUDICATE CONTESTED
26 CASES SUBMITTED UNDER THIS SUBTITLE.

27 20-2114.

28 (A) (1) THE OFFICE SHALL SET THE DATE FOR A HEARING ON A
29 CONTESTED PRELIMINARY DETERMINATION NOT SOONER THAN 60 DAYS AND NOT
30 LATER THAN 120 DAYS AFTER THE PRELIMINARY DETERMINATION WAS REFERRED
31 TO THE OFFICE FOR ADJUDICATION.

1 **(2) THE ADMINISTRATIVE LAW JUDGE SHALL IMMEDIATELY NOTIFY**
2 **THE PARTIES OF THE TIME AND PLACE OF THE HEARING.**

3 **(3) THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH**
4 **TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

5 **(B) (1) THE PARTIES TO THE HEARING SHALL INCLUDE THE PARTY**
6 **DISPUTING THE TRUST'S PRELIMINARY DETERMINATION AND THE TRUST.**

7 **(2) ON REQUEST BY A PERSON WHO IS A PARTY TO THE SETTLEMENT**
8 **AGREEMENT WITH A CLAIMANT OR WAS A PARTY TO THE UNDERLYING MEDICAL**
9 **MALPRACTICE CLAIM BROUGHT BY THE CLAIMANT, THE PERSON SHALL BE**
10 **ALLOWED TO PARTICIPATE AS A PARTY TO THE CONTESTED PRELIMINARY**
11 **DETERMINATION PROCEEDING.**

12 **(C) (1) ON APPLICATION TO THE ADMINISTRATIVE LAW JUDGE SETTING**
13 **FORTH THE MATERIALITY OF THE EVIDENCE TO BE GIVEN, A PARTY TO A**
14 **PROCEEDING MAY SERVE INTERROGATORIES, MAKE DOCUMENT REQUESTS, OR**
15 **CAUSE THE DEPOSITIONS OF WITNESSES RESIDING WITHIN OR OUTSIDE THE STATE**
16 **TO BE TAKEN.**

17 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**
18 **DEPOSITIONS SHALL BE TAKEN AFTER NOTICE IS GIVEN AND IN THE MANNER**
19 **PRESCRIBED FOR THE TAKING OF DEPOSITIONS IN CIVIL ACTIONS.**

20 **(II) THE DEPOSITIONS SHALL BE DIRECTED TO THE**
21 **ADMINISTRATIVE LAW JUDGE BEFORE WHOM THE PROCEEDINGS MAY BE PENDING.**

22 **(3) THE COSTS OF INTERROGATORIES, DOCUMENT REQUESTS, AND**
23 **DEPOSITIONS SHALL BE TAXED AS EXPENSES INCURRED IN CONNECTION WITH THE**
24 **FILING OF A CLAIM.**

25 **(D) (1) IN DETERMINING AN AWARD FOR ATTORNEY'S FEES, THE**
26 **ADMINISTRATIVE LAW JUDGE SHALL APPLY THE STANDARDS PROVIDED IN**
27 **MARYLAND RULE 2-703(F)(3).**

28 **(2) THE ADMINISTRATIVE LAW JUDGE MAY AWARD ATTORNEY'S FEES**
29 **FOR THE PROSECUTION OF A CLAIM FOUND TO BE INELIGIBLE UNDER THIS**
30 **SUBTITLE IF THE CLAIM WAS NOT SUBMITTED IN BAD FAITH OR WITHOUT**
31 **SUBSTANTIAL JUSTIFICATION.**

32 **(E) THE ADMINISTRATIVE LAW JUDGE SHALL MAKE A DECISION ON ANY**
33 **CONTESTED PRELIMINARY DETERMINATION WITHIN 30 DAYS AFTER THE HEARING.**

1 **20-2115.**

2 **(A) (1) A DECISION OF THE OFFICE UNDER THIS SUBTITLE SHALL**
3 **CONSTITUTE A FINAL DECISION FOR PURPOSES OF JUDICIAL REVIEW.**

4 **(2) A PARTY MAY SEEK JUDICIAL REVIEW OF A FINAL DECISION**
5 **UNDER § 10-222 OF THE STATE GOVERNMENT ARTICLE.**

6 **(B) THE FILING OF A PETITION FOR JUDICIAL REVIEW SHALL STAY**
7 **ENFORCEMENT OF THE FINAL DECISION.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial
9 members of the Board of Trustees of the Maryland Infant Lifetime Care Trust shall expire
10 as follows:

- 11 (1) two members in 2021;
12 (2) two members in 2022;
13 (3) two members in 2023; and
14 (4) one member in 2024.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to
16 apply only prospectively and may not be applied or interpreted to have any effect on or
17 application to any cause of action arising before January 1, 2021.

18 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
19 1, 2020.