

# Notes

**MEDICAL MUTUAL**  
*Liability Insurance Society of Maryland*

## FROM THE CHAIR OF THE BOARD

March 2005

**SPECIAL  
LEGISLATIVE  
UPDATE**

### HEADLINES

#### **New Legislation Offers Some Relief to Maryland Physicians**

The passage of new legislation will address some of the concerns of Physicians facing a malpractice insurance crisis. MEDICAL MUTUAL is working to implement the complex legislation.

#### **Overview Presented on Key Sections of New Legislation**

An overview of the material aspects of the new legislation directly affecting you is included in this issue for your convenience.

#### **Additional Information Available**

Additional information on the new legislation and the medical malpractice insurance crisis is available through the MEDICAL MUTUAL web site at [www.weinsuredocs.com](http://www.weinsuredocs.com).

Dear MEDICAL MUTUAL Member:

With the passage of the "Maryland Patients' Access to Quality Health Care Act of 2004," and the related Implementation and Corrective Provisions Bill, you will soon be experiencing the benefits of this significant legislative undertaking. The broad scope of the legislation is such that a complete description of the legislation is not practical. However, in the following section of this newsletter we will attempt to provide an overview of the material aspects of the new law directly impacting you.

Many parts of the new law will substantially change the way MEDICAL MUTUAL does business. They will require significant changes to our computer system, our accounting and claims procedures, as well as how we navigate the legal system. As always, we will keep you informed of medical professional liability issues that most directly affect you or your practice. We ask that you bear with us as we work diligently to implement this comprehensive and complex piece of new legislation.

Thank you for your understanding and support as we continue our efforts to serve you.

Sincerely,



D. Ted Lewers, M.D.  
Chair of the Board

### Key Sections of the New Legislation

#### **Creation of a Maryland Health Care Provider Rate Stabilization Fund (RSF)**

A premium tax levied on Health Maintenance Organizations (HMOs) and Managed Care Organizations (MCOs) has been dedicated to the Rate Stabilization Fund (RSF). The RSF will be available to subsidize Physician medical professional liability premiums at some stated level. For 2005 policies, the subsidy will pay the amount of premium due in excess of what would have been due if 2004 rates remained in effect, less a 5% increase in the 2004 rate.

In the next three calendar years, the subsidy amount will be calculated by a predetermined formula. The Maryland Insurance Commissioner will perform the calculation and produce a bulletin by December 1 of each year announcing the amount of the subsidy. The amount will be stated in the form of a percent credit to be applied to the medical professional liability premium.

Three important factors will dictate your eligibility to receive all or some of the subsidy provided by the RSF. First, your

insurance company must elect to participate in the RSF. MEDICAL MUTUAL will participate in the RSF and follow the prescribed process to obtain the subsidy. Second, you must elect to participate in the RSF. This will be accomplished by MEDICAL MUTUAL notifying you of the amount of the subsidy you are eligible for, and allowing you 15 days to decline to participate in the RSF. Third, RSF funding is tied primarily to the HMO/MCO premium tax. In the event the State provides less than the total funding necessary to cover the prescribed subsidy, the amount of the subsidy available to you will be reduced accordingly.

Very shortly, you will receive a notice of the amount of the RSF subsidy for which you are eligible. After waiting the required time for those that wish to elect out of the RSF, we will submit a request to the State for the RSF subsidy. Upon receipt of the subsidy from the State, we will apply the subsidy to your account. If the subsidy amount is greater than your current balance due, you will be given the opportunity to apply the remainder to future renewals, or receive a check for the remainder.

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## Key Sections of the New Legislation

(continued)

### Changes to Court Rules and Procedures

The new law provides a number of changes to the rules and procedures applicable to medical malpractice litigation in the State of Maryland. Some of the changes that we think are most significant for your understanding are:

- The cap on non-economic damages has been frozen at its current level of \$650,000 for causes of action arising on or after 1/1/05 until 12/31/08. After that, the \$15,000 index will continue to accrue annually.
- The cap on wrongful death causes of action has been limited to 125% of the non-economic damage limit. For causes of action arising between 1/1/05 and 12/31/08, the wrongful death action would be limited to a possible recovery of \$812,500.
- The court now may call its own neutral expert witness to testify on the issue of a plaintiff's future medical expenses or future loss of earnings. This provision has the potential to mitigate the outrageous escalation of awards for these types of damages.

- The rules involving Certificates of Merit and experts have been changed to some degree. Hopefully, this could further strengthen the defense against non-meritorious claims.

### 'I'm Sorry' Protection

The new law provides that an expression of regret or apology made by a Physician is inadmissible as an admission of liability or fault in court. But, an admission of liability or fault is not protected by this law. While quality patient communication can be extremely beneficial after an unexpected outcome, Physicians will need to educate themselves on the proper way to communicate regret without inadvertently conveying information that can be misconstrued as an admission of liability and therefore not be protected by this statute. We will be providing educational resources for our insured Physicians on this topic.

### Insurance Coverage Changes

There are two material coverage changes included in the new law. First, MedGuard coverage (providing defense for disciplinary type proceedings) may no longer be included in a Physician's

medical professional liability insurance policy. Consequently, your renewal policy will not include MedGuard coverage.

Second, insurance companies writing medical professional liability insurance policies must offer deductibles, applicable only to liability, in the following amounts:

- \$25,000
- \$50,000
- \$100,000

A policy may be cancelled for failure to pay a deductible when due. We will offer these deductibles. Please contact your producer, or our Customer Service Department at 410-785-0050 or toll free at 800-492-0193, if you would like more information on our deductible program.

*For additional details on the new bills, visit the MEDICAL MUTUAL web site at [www.weinsuredocs.com](http://www.weinsuredocs.com). Click on the "Medmal Insurance Crisis" menu option. Links are provided to the bills on the Maryland General Assembly web site.*

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- Additional Information on Legislation Available

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