Primer
From the House Appropriations Committee
JOE MARKOSEK, DEMOCRATIC CHAIRMAN January 27, 2014

Medical Care Availability and Reduction of Error (MCARE) Fund

Act 13 of 2002 created the Medical Care Availability and Reduction of Error (MCARE) Fund. MCARE succeeded the Medical Professional Liability Catastrophe Loss (CAT) Fund. The CAT fund began to accept coverage and accrue unreserved liabilities in calendar year 1976.

Overview

The main purpose of the MCARE Fund is to ensure reasonable compensation for people injured due to medical negligence. Act 13 requires participating health insurers to purchase private medical malpractice insurance for basic insurance coverage or "primary coverage". Primary coverage must be obtained in the amount of $500,000 per occurrence and $1,500,000 per annual aggregate ($2,500,000 per annual aggregate for hospitals). Money in the MCARE fund is used to pay claims against participating health providers for losses or damages awarded in excess of that primary coverage.

Act 13 provides for the "phase-out" of MCARE, eventually shifting all medical liability coverage to private providers. MCARE is operated on a "pay-as-you-go" basis. When court judgments and settlements occur, MCARE makes annual payments to cover the obligations. Claim payments often occur years after the alleged incident. As a result, even after the shift to private insurance coverage, MCARE will continue to make claims payments, known as a "tail," for several decades. Act 13 provided for the phase-out to begin in 2006, subject to a review and report by the Insurance Commissioner. Thus far, based on statutorily prescribed capacity studies, the commissioner has maintained the aforementioned coverage levels.

Under Act 13, the MCARE Fund has received the following revenue sources: (1) assessments on health care providers; (2) transfers from the Health Care Provider Retention Account (HCPRA) to cover assessment abatements; (3) revenue related to traffic moving violations via the AutoCAT Fund; and (4) interest earnings on the MCARE Fund. Please note that the assessment abatement program and related transfer from HCPRA ended in 2009/10. Likewise, revenues related to the AutoCAT fund have been redirected to the General Fund since 2009/10.

Provider assessments are the largest revenue source to the fund. Assessments are calculated based on a formula outlined in the MCARE Act. The formula examines the number of payout claims in the previous calendar year and any projected operating expenses in the current calendar year. The formula also accounts for maintaining a 10 percent cushion in the Fund. Due to the nature of the formula, in years where claims are declining, providers pay more into the Fund than is required to cover claim payouts in the current year.

The Health Care Provider Retention Account (HCPRA) was originally created under Act 44 of 2003. The purpose of the account was to cover the costs of MCARE assessment abatements for participating health care providers as outlined in the legislation. Funding was provided under Act 46 of 2003, which raised the cigarette tax and directed the equivalent of 25 cents per pack to the account.

Under Act 44 of 2003 and subsequent related legislation, participating health care providers were eligible to receive abatements equating to either 50 or 100 percent of their MCARE assessments for calendar years 2003 through 2006, depending on the stipulations set forth in law. The program expired in December 2007.

Transfers to the General Fund and Subsequent Litigation

As part of the 2009/10 budget, the remaining balance in the HCPRA (more than $700 million) was transferred to the General Fund. The dedicated cigarette tax also was redirected to the General Fund in perpetuity. In addition, the 2009/10 budget transferred $100 million from the MCARE fund balance to the General Fund for that year only. Also as part of the 2009/10 budget (under Act 50 of 2009), the AutoCAT transfer (approximately $44 million) that otherwise would have been deposited into the MCARE Fund was redirected to the General Fund for fiscal years 2009/10 and 2010/11. Act 26 of 2011 then permanently redirected the AutoCAT transfer to the General Fund.

The Hospital Association of Pennsylvania and Pennsylvania Medical Society filed petitions under Commonwealth Court challenging the use of HCPRA and MCARE funds for General Fund expenditures, unrelated to medical liability insurance. The court issued an opinion on April 15, 2010, ruling favorably for the petitioners. No repayments of funds have been issued at this time, as the ruling is being appealed. On Sept. 26, 2013, the Pennsylvania Supreme Court reversed the Commonwealth Court's decision, but remanded the matter back to the Commonwealth Court for further consideration. In particular, the court must determine whether some or all of the $100 million in question was surplus money in the MCARE fund.

MCARE-related Transfers to the General Fund
($ in millions)

Fiscal Year	Funding Source	Amount Transferred to General Fund
2009/10	Health Care Provider Retention Account (HCPRA)[1]	$708
2009/10	Medical Care Availability and Reduction of Error (MCARE) Fund	$100
2009/10	Revenue related to traffic moving violations via the AutoCAT Fund[2]	$44
2010/11	Revenue related to traffic moving violations via the AutoCAT Fund[2]	$44
2011/12	Revenue related to traffic moving violations via the AutoCAT Fund[3]	$44

[1] Also eliminated the account and redirected the cigarette tax revenue to the General Fund going forward.

[2] One-time transfers in the Fiscal Code.

[3] Permanently redirected this revenue source to the General Fund in the Fiscal Code, starting in 2011/12.

House Appropriations Committee (D)

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