As proposed in House Bill 2, the Medical Professional Liability Insurance Rate Stabilization Fund ("the Fund") contains a multitude of technical drafting errors and is virtually impossible to implement. Nor will the Fund, as drafted, serve the purposes it is supposed to, as the 2% HMO tax will not provide the amount of funds the bill requires. This tax will not generate the $80 Million projected, but will be closer to $65 Million (assuming that 100% of the tax may be implemented for Medicaid HMOs and MCOs). Thus, the shortfall to the medical professional liability insurers will be even greater than anticipated.

It should be pointed out that even if one uses the figures in the Fiscal and Policy Note (with the exception of the incorrect figure on page 15 of the note that leads to the erroneous conclusion that the Fund is fully funded), the HMO tax does not fully fund the Rate Stabilization Fund. In fiscal year 2007, there will be a deficit of more than $2 million in the Fund. This does not include the nearly $3 million that will be lost to the General Fund and the Transportation Trust Fund. If the goal of the bill was to be fully funded, it clearly has failed in this regard.

Further, it should be noted that the medical professional liability insurers writing in Maryland, aside from Medical Mutual, consider this Fund unworkable and may not participate. Two of the three of these carriers have expressed serious reservations about the bill, one of which, The Doctor's Company, has expressly urged a veto. If the bill becomes effective, these insurers will then have to evaluate whether they will continue to issue policies in the State. Rather than attracting medical professional liability insurers to the State, which would encourage competition in rate setting, this bill may have the effect of driving insurers to leave the State.

Impact on Medical Mutual Liability Insurance Society of Maryland

This Bill threatens the solvency of The Medical Mutual Liability Insurance Society of Maryland (Medical Mutual). As written, the Bill requires the company to absorb a large portion of the approved rate increase from its surplus (25.5%). Additionally, the funds available to it under the Fund are limited with the shortfall to again come from Medical Mutual's surplus. Further, the Bill requires rate increases to be reviewed with an eye toward the company's financial resources (i.e., surplus) before rate increases are granted. This approach is fiscally irresponsible and could result in making the company insolvent in a short period of time due to the very volatile nature of this line of insurance, medical professional liability. MIA did projections and determined that for Medical Mutual to fund a portion of its rate increases through the use of its surplus, the company would be below the required risk based capital (RBC) within two years. This would require the MIA to take immediate action, up to taking control of the company because of its potential insolvency.

The solvency of Medical Mutual is further threatened by the fact that the other commercial carriers have expressed concern about House Bill 2 and the impact it will have on their ability to generate profitable business in the State. Should the other three carriers insuring physicians withdraw from the Maryland marketplace, then Medical Mutual will be the only company available to Maryland physicians and this will further threaten Medical Mutual's surplus. The company, in all likelihood, could not sustain the additional risks it would be asked to absorb. The end result could be