

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 301
Judiciary

(The Speaker, *et al.*) (By Request – Administration)

Maryland Medical Injury Compensation Reform Act

This Administration bill establishes various tort and other reforms directed at compensation for medical injuries.

The bill takes effect June 1, 2005.

Fiscal Summary

State Effect: The bill would not materially affect governmental operations or finances.

Local Effect: None.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary and Current Law:

Qualification for Expert Testimony Generally

The Bill: In a civil action, if a court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness determined by the court to be qualified as an expert by knowledge, skill, experience, training, or education may testify concerning the evidence or fact in issue in the form of an opinion or otherwise only if: (1) the testimony is based

on sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case. If a court considers it necessary or on motion by a party, the court may hear evidence regarding these criteria. If the court does so, the court must hear the evidence out of the jury's presence.

Current Law: Under the Maryland Rules, expert testimony may be admitted in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making its determination, the court must determine: (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education; (2) the appropriateness of the expert testimony on the particular subject; and (3) whether a sufficient factual basis exists to support the expert testimony.

Qualifications for Medical Experts

The Bill: A person claiming damages due to a medical injury must file a certificate of qualified expert for each defendant. A health care provider who attests in a certificate of qualified expert or testifies about the merits of a claim or defense as a qualified expert may not devote more than 20% of the expert's professional activities to activities unrelated to the care or treatment of patients and that lead or could lead to court testimony.

Current Law: A person claiming damages due to a medical injury must file a certificate of qualified expert. Failure to file results in dismissal of the case, without prejudice. A health care provider who attests in a certificate of qualified expert or testifies about the merits of a claim or defense as a qualified expert may not devote more than 20% of the expert's professional activities that directly involve testimony in personal injury claims.

For actions filed on or after January 1, 2005, a health care provider who attests in a certificate of a qualified expert or testifies concerning a defendant's compliance with or departure from standards of care must: (1) have clinical experience, provided consultation relating to clinical practice, or taught medicine in the defendant's specialty or related field or in the field of health care in which the defendant provided care or treatment within five years of the incident; and (2) be board certified in the same specialty if the defendant is board certified in a specialty, unless the defendant was providing care or treatment to the plaintiff unrelated to the area in which the defendant is board certified or the health care provider taught medicine in the same or similar field.

Collateral Source

The Bill: Evidence that a claimant has received or will receive uncompensated care or services is admissible and may be considered by an arbitration panel or a court in awarding damages.

For causes arising on or after June 1, 2005, a defendant may introduce evidence that the plaintiff has been or will be paid, reimbursed, or indemnified by a government or through a governmental program, by insurance, or under contract for all or part of the damages assessed. If the defendant introduces such evidence, the plaintiff may introduce evidence of: (1) the cost to obtain the payment, reimbursement, or indemnity; or (2) that a person or governmental entity has a subrogation right, and the amount of the subrogated interest. A defendant may not introduce evidence concerning any future expenses, costs, and losses unless specified criteria are satisfied.

Current Law: Generally evidence that a claimant has received or will receive uncompensated care or services or that a plaintiff has been or will be paid, reimbursed, or indemnified by another source is not admissible.

Itemization of Damages

The Bill: The arbitration panel or trier of fact in a court proceeding must itemize a malpractice verdict to show: (1) past medical expenses; (2) future medical expenses; (3) past loss of earnings; (4) future loss of earnings; (5) past pecuniary loss; (6) future pecuniary loss; (7) other past economic damages; (8) other future economic damages; (9) past noneconomic damages; and (10) future noneconomic damages.

Current Law: Upon timely request, the arbitration panel or trier of fact in a court proceeding must itemize damages assessed for: (1) incurred medical expenses; (2) rehabilitation costs; and (3) loss of earnings. Future expenses, costs, and losses must be itemized separately.

Expert Witness Testimony on Damages

The Bill: For a claim or cause of action filed on or after June 1, 2005, unless a court finds good cause not to appoint one, the court must appoint a neutral expert witness to testify on the issue of a plaintiff's economic damages and periodic payments. The costs of a neutral expert witness will be divided equally among the parties.

Current Law: A court may on its own motion, or the motion of a party, employ a neutral expert witness to testify on the issue of a plaintiff's future medical expenses and future

loss of earnings. Unless otherwise agreed by the parties, the costs are divided by the parties.

Limits on Noneconomic Damages

The Bill: For a medical malpractice award or verdict for a cause of action arising on or after January 1, 2005, noneconomic damages are limited to \$500,000. This limitation applies in the aggregate to all claims for personal injury and wrongful death arising from the same medical injury regardless of the number of claims, plaintiffs, or defendants. If both a personal injury action and a wrongful death action with more than one claimant are filed, the damages would be apportioned among the two actions and the claimants if the jury awards an amount that exceeds the limit.

Current Law: For a medical malpractice award or verdict for a cause of action arising on or after January 1, 2005, noneconomic damages are limited to \$650,000. This limit is frozen for four years, through calendar 2008, and then increases by \$15,000 annually. Generally, this aggregate amount applies to all claims for personal injury and wrongful death arising from the same medical injury, regardless of the number of claims, claimants, plaintiffs, or beneficiaries. However, if there is a wrongful death action in which there is more than one claimant or beneficiary, whether or not there is a personal injury action arising from the same injury, the total amount of noneconomic damages that may be awarded is 125% of the established limit, regardless of the number of claims, plaintiffs, or beneficiaries (\$812,500 for four years). If there is more than one claimant or beneficiary, noneconomic damages would be apportioned among them if the jury awards an amount that exceeds the limit.

Past Medical Expenses

The Bill: For a medical malpractice award or verdict for a cause of action arising on or after January 1, 2005, an award for past medical expenses must exclude any amount not actually paid by or on behalf of the claimant or plaintiff or any amount actually owed by the claimant or plaintiff to a health care provider.

Current Law: Past medical expenses are limited to the total amount paid plus the total amount incurred but not paid, if the plaintiff or another person on the plaintiff's behalf is obligated to pay.

Lost Earnings

The Bill: Awards for past and future earnings are discounted for the proper amount of income and payroll taxes.

Current Law: Awards for past and future earnings are not discounted for taxes that would have been paid.

Determination of Future Medical Expenses

The Bill: For medical malpractice claims arising after January 1, 2005, a verdict or award for future medical expenses must be based solely on Medicare reimbursement rates in effect on the date of the verdict for the locality in which the care is to be provided. A verdict or award for future medical expenses for hospital services must be based solely on rates approved by the Health Services Cost Review Commission, if the federal Medicare waiver is still in effect. A verdict or award for future medical expenses for nursing facility services must be based solely on the statewide average payment rate for the Medicaid program in effect on the date of the verdict or award. A verdict or award for future medical expenses for which there is no specified rate must be based on actual cost on the date of the verdict or award. All verdicts and awards for future medical expenses are adjusted for inflation based the consumer price index published by the Bureau of Labor Statistics.

Current Law: Generally, economic damages include loss of earnings and medical expenses. These damages may be reduced by an arbitration panel, on application of a party. The application may include a request that damages be reduced to the extent that the claimant has been or will be paid, reimbursed, or indemnified for some or all of the damages assessed. If a defendant objects to the damages amounts as excessive after a trial, the court must hold a hearing. If the court finds that the damages are excessive, the court may then grant a new trial on damages or, if the plaintiff agrees, grant a remittitur.

Periodic Payments of Awards and Verdicts

The Bill: For a medical malpractice claim arising on or after June 1, 2005, unless a defendant and claimant or plaintiff have arranged for an alternative payment method, if future economic and noneconomic damages exceed \$100,000, an arbitration panel or court must order payment of future damages in periodic payments as specified under the bill.

For a survival action, noneconomic damages are paid as part of the lump sum containing past economic damages, past pecuniary loss, and other past economic damages. Damages for future pecuniary loss and other future economic damages of \$100,000 or more must be paid in periodic payments as specified under the bill.

A defendant and a claimant or plaintiff may submit a proposal to comply with the bill's periodic payment requirements. The proposal may include the purchase of an annuity or annuities. Annuities must meet specifications established under the bill.

Current Law: A court or arbitration panel may order that all or part of the future economic damages be paid in the form of an annuity or other financial instrument, or that they be paid in periodic or other payments, consistent with the plaintiff's needs, funded by the defendant or the defendant's insurer. If the plaintiff dies before the final periodic payment, the unpaid balance of the award for future loss of earnings reverts to the plaintiff's estate, and the unpaid balance for future medical expenses reverts to the defendant or the defendant's insurer.

Jury Size

The Bill: A civil jury must consist of at least six jurors.

Current Law: A civil jury must consist of six jurors.

Interest on a Judgment

The Bill: Generally, the legal rate of interest on a judgment is the rate of the weekly average one-year constant maturity treasury yield, as published by the Federal Reserve Board of Governors, for the calendar week preceding the date of the judgment.

Current Law: Generally, the legal rate of interest on a judgment is 10% on the amount of the judgment.

Practice of Medicine

The Bill: A physician licensed by and residing in another jurisdiction, while testifying in a civil action or attesting to compliance with or departures from standards of care for purposes of a certificate of qualified expert, is practicing medicine for purposes of discipline by the State Board of Physicians. The board may take disciplinary action similar to that that the board may take against a licensed physician.

The bill also lists as grounds for discipline falsely testifying or attesting to compliance with or departure from standards of care when attesting to a certificate of qualified expert or testifying in a civil action, as determined by appropriate peer review.

Current Law: The Board of Physicians, on affirmative vote of a majority of a quorum, may reprimand a licensee, place a licensee on probation, or suspend or revoke a license for violations of prescribed standards.

Medical Mutual Liability Insurance Producer Agreements

The Bill: The bill repeals requirements imposed on the Medical Mutual Society of Maryland regarding direct sales, discounts, and commissions under Chapter 5 of the 2004 Special Session.

Current Law: The society must offer policyholders and potential policyholders the option to purchase coverage directly and must renew coverage directly. If a policyholder purchases or renews directly, the society must provide a discount or rebate equaling the commission that the society would have paid an insurance producer to sell the same policy less 1% for administrative costs.

From January 1, 2005 through December 31, 2009, the society may not pay a commission that exceeds the rate paid by that insurer on November 1, 2004, minus 5% of the premium. An insurer that was not active in the State on November 1, 2004, may not pay a commission that exceeds 5% of the premium.

Additional Information

Prior Introductions: SB 1 and HB 1 of the 2004 Special Session included several of the provisions included in this bill.

Cross File: SB 221 (The President, *et al.*) (By Request – Administration) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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ncs/jr

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