

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 512
Judiciary

(Delegate Bates, *et al.*)

Medical Injury Compensation - Claimant Recovery

This emergency bill provides that a person having a claim against a health care provider for damages due to a medical injury occurring on or after January 1, 2005 is entitled to not less than 70% of the first \$250,000 recovered, and 90% of any amount recovered in excess of that amount. These requirements apply regardless of: (1) whether the amount recovered is by settlement, award, or verdict; (2) whether the person for whom the amount is recovered is a responsible adult, a minor, or a person who is mentally incompetent; or (3) the number of defendants involved in the claim. An attorney who violates the bill is subject to disbarment, suspension, or other disciplinary action under the Maryland Rules. For purposes of the bill, costs of medical care incurred by the claimant and the attorney's office-overhead costs or charges are not deductible disbursements or costs.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Under the Maryland Rules, an attorney's fee must be reasonable. The factors to be considered in determining the reasonableness of a fee include: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill

requisite to perform the legal services properly; (2) the likelihood that the acceptance of particular employment will preclude other employment by the lawyer; (3) customary fees charged in the locality for similar services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer performing the services; and (8) whether the fee is fixed or contingent.

A fee may be contingent on the outcome of the matter for which the service is rendered, except where prohibited. Contingency fee prohibitions include: (1) fees charged in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or custody of a child, or upon the amount of alimony or support or property settlement, or property award resulting from divorce; or (2) representing a defendant in a criminal matter.

Additional Information

Prior Introductions: A similar bill, HB 1108 of 2004, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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

Fiscal Note History: First Reader - March 10, 2005
mp/jr

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