SB 585

Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 585 (Senator Pugh)
Judicial Proceedings and Finance

Maryland No-Fault Birth Injury Fund

This bill establishes a system for adjudication and compensation of claims arising from birth-related neurological injuries by establishing the Maryland No-Fault Birth Injury Fund. The bill establishes the governance, administration, funding, and purposes of the fund. The Department of Health and Mental Hygiene (DHMH) is charged with developing patient safety initiatives.

The bill takes effect July 1, 2015. The bill must be construed to apply prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before January 1, 2016.

Fiscal Summary

State Effect: General fund expenditures increase by more than $1 million in FY 2016, which accounts for two staff members for the Perinatal Clinical Advisory Committee (PCAC), two administrative law judges (ALJs) to adjudicate claims, and increased Medicaid costs due to increased rates for obstetrics services. Federal fund revenues and expenditures increase by $1.1 million in FY 2016 to cover increased Medicaid costs. Future years reflect annualization associated with personnel but assume no change in Medicaid's share of hospital revenues or the number of births.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
FF Revenue	$1,131,000	$1,131,000	$1,131,000	$1,131,000	$1,131,000
GF Expenditure	$1,000,400	$1,141,200	$1,158,700	$1,177,200	$1,196,400
FF Expenditure	$1,131,000	$1,131,000	$1,131,000	$1,131,000	$1,131,000
Net Effect	($1,000,400)	($1,141,200)	($1,158,700)	($1,177,200)	($1,196,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Maryland No-Fault Birth Injury Fund Effect: Nonbudgeted expenditures for the new fund increase by $1.3 million in FY 2016, which accounts for one full-time executive director to administer and help establish the fund, per diem expenses for board members, required actuarial and audit reports, pamphlets to alert patients to their rights and the availability of the fund, and payments to claimants. Future year expenditures reflect annualization for personnel costs, ongoing costs associated with all other required activities, and the cumulative impact of payments to claimants due to lifetime actual expenses being covered. Nonbudgeted revenues for the fund increase by $25.7 million annually beginning in FY 2016 from premiums paid by hospitals, physicians, and medical professional liability insurers.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
NonBud Rev.	$25,661,800	$25,661,800	$25,661,800	$25,661,800	$25,661,800
NonBud Exp.	$1,278,500	$2,656,000	$3,711,500	$4,767,300	$5,823,300
Net Effect	$24,383,300	$23,005,800	$21,950,300	$20,894,500	$19,838,500

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: "Birth-related neurological injury" means an injury to the brain or spinal cord of a live infant that (1) is caused by oxygen deprivation or mechanical injury that occurred or could have occurred during preprodromal labor or labor, during delivery, or in the immediate resuscitative period after delivery and (2) causes death or permanent and substantial mental and physical disability that results in a permanent need for assistance in at least two listed activities of daily living. "Birth-related neurological injury" includes only an injury or death involving obstetrical services provided in a Maryland hospital. A "birth-related neurological injury" does not include a disability or death caused by a genetic or congenital abnormality.

"Qualified health care costs" means reasonable expenses of medical, hospital, rehabilitative, family residential or custodial care, professional residential care, durable medical equipment, medically necessary drugs, and related travel or vehicle modifications that are necessary to meet a claimant's health care needs as determined by the claimant's treating physicians, physician assistants, or nurse practitioners, and as otherwise defined by regulation.

Malpractice Claims

The bill applies to births occurring on or after January 1, 2016. The rights and remedies under the bill exclude and supplant all other rights and remedies of the infant, personal representative of the infant, parents, dependents, or next of kin arising out of or related to the birth-related neurological injury to the infant, including claims of emotional distress related to the infant's injury. The bill does not exclude other rights and remedies available to the mother of the infant arising out of or related to a physical injury, separate and distinct from a birth-related neurological injury to the infant, suffered by the mother of the infant during the course of delivery of the infant.

Notwithstanding any other provision of law, a civil action is not prohibited against a physician or hospital if there is clear and convincing evidence that the physician or hospital maliciously intended to cause a birth injury and the claim is filed before and in lieu of payment of an award under the bill. However, if a claim in a civil proceeding before a circuit court appears to involve an eligible birth-related neurological injury, on the motion of a party in the civil proceeding, the court must (1) order a party to file a claim for a birth-related neurological injury with the fund and (2) dismiss the civil proceeding without prejudice. Likewise, if a claim in a proceeding before the Health Care Alternative Dispute Resolution Office (HCADRO) appears to involve an eligible birth-related neurological injury, on the motion of a party in the proceeding, the Director of HCADRO must (1) order a party to file a claim for a birth-related neurological injury with the fund and (2) dismiss the proceeding before HCADRO without prejudice.

A claim for compensation and benefits under the bill must be filed no later than 21 years after the birth of the injured infant and may be filed by a legal representative on behalf of an injured infant and, in the case of a deceased infant, by an administrator, a personal representative, or any other legal representative of the deceased infant.

The limitations period with respect to a civil action that may be brought by, or on behalf of, an injured infant for damages allegedly arising out of, or related to, a birth-related neurological injury must be tolled by the filing of a claim under the bill, and the time the claim is pending or is on appeal may not be computed as part of the period within which the civil action may be brought.

Filing a Claim for Compensation with the No-Fault Birth Injury Fund

A claimant must file a claim to receive compensation and other benefits from the fund. A claim must include (1) the name and address of the legal representative and the basis for the legal representative's representation of the injured infant; (2) the name and address of the injured infant; (3) the name and address of each physician providing obstetrical services, other health care practitioners who are known to have been present at the birth,

and the hospital at which the birth occurred; (4) a description of the disability for which the claim is made; (5) the time and place the injury occurred; and (6) a brief statement of the facts and circumstances surrounding the injury and giving rise to the claim.

Within 10 days after filing a claim, the claimant must provide additional information relating to the claim including (1) all available relevant medical records relating to the birth-related neurological injury and a list identifying unavailable records known to the claimant and the reasons for their unavailability; (2) appropriate assessments, evaluations, and prognoses and other records and documents reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the injured infant on account of the birth-related neurological injury; (3) documentation of expenses and services incurred to date that identifies the payment made for those expenses and services and the payor; and (4) documentation of any applicable private or governmental source of services or reimbursement relative to the impairments.

The fund must provide copies of claim materials to all physicians, health care practitioners, and the hospital that were named in a claim within 10 days after receipt of a complete claim. The fund must investigate a claim upon receipt and serve the claimant with its response within 90 days. The response must include whether the fund determines that the injury alleged is a birth-related neurological injury. The fund must submit a claim, all materials submitted by the claimant, and its response to the Office of Administrative Hearings (OAH) for adjudication and to other specified agencies for their review within 10 days after serving its response.

Each determination of eligibility and for compensation and benefits must be delegated to OAH for adjudication and decision by an ALJ.

Evaluation and Determination by the Office of Administrative Hearings

OAH must evaluate and make a determination about whether a claim involves an eligible birth-related neurological injury and the nature and amount of compensation and benefits to be provided to the claimant on the basis of the evidence presented in a contested hearing. OAH must dismiss a claim if it determines that the injury alleged is not a birth-related neurological injury.

If OAH determines an infant has sustained a birth-related neurological injury, the claimant may be awarded one or more benefits and compensation to be paid or provided from the fund. An infant may receive actual lifetime expenses for qualified heath care costs, limited to reasonable charges prevailing in the same community for similar treatment of injured persons when the treatment is paid for by the injured person, excluding specified expenses – such as expenses that the infant receives from governmental funding, expenses provided through a health insurance policy, or expenses related to housing or the modification of a

residential environment. An infant may also receive an award of up to $100,000, payable in periodic payments or as a lump sum to the injured infant or to the parents or legal guardians of the injured infant for the benefit of the injured infant. In addition, loss of earnings may be paid in periodic payments beginning on the *eighteenth birthday* of the infant; alternatively a funeral payment of $15,000 is awarded if the infant dies before age 18. Finally, funding may be awarded for reasonable expenses incurred in connection with the filing and prosecution of a claim to assert eligibility and for compensation and benefits under the bill, including reasonable attorney's fees on an hourly basis, subject to the approval and award of the ALJ. An award of expenses must require the immediate payment of expenses previously incurred and that future expenses be paid as incurred.

Hearings Related to a Claim for Benefits and Compensation

OAH must set the date for a hearing on a contested case no sooner than 60 days and no later than 120 days after the written notice of the fund's submission of a claim. The ALJ must immediately notify the parties of the time and place of the hearing. The parties to the hearing must include the claimant and the fund, and third parties may be permitted upon request by a person or entity identified by the claimant in the claim.

A party to the proceeding may, upon application to the ALJ, serve interrogatories or take depositions of witnesses residing in or outside the State. The depositions must be taken after giving notice and must be taken in the manner prescribed at law, except that they must be directed to the ALJ before whom the proceedings are pending. Costs of interrogatories and depositions must be taxed as expenses incurred in connection with the filing of a claim.

An OAH decision constitutes a final decision for the purposes of judicial review, and a party may seek judicial review of a final decision under the Administrative Procedure Act. A petition for judicial review stays enforcement of the final decision.

Birth Injury Prevention

The Secretary of Health and Mental Hygiene must convene the Perinatal Clinical Advisory Committee (PCAC) to oversee the general dissemination of initiatives, guidance, and best practices to health care facilities for perinatal care in consultation with the Maternal and Perinatal Health Program in DHMH. DHMH must develop initiatives and make recommendations to build cultures of patient safety for perinatal care within health care facilities.

PCAC must undertake collaborative work to improve obstetrical care outcomes and quality of care, based on the Maryland Perinatal System Standards as well as clinical protocols that can be standardized and adopted by health care facilities.

Upon receipt of a birth injury claim from the fund, the Office of Health Care Quality (OHCQ) and the State Board of Physicians may investigate the claim and take appropriate action with respect to a health care facility and physician that provided care for the affected infant or mother.

The Maryland No-Fault Birth Injury Fund

The bill establishes the Maryland No-Fault Birth Injury Fund, which is a member of the Property and Casualty Insurance Guaranty Corporation. The fund is established to provide compensation and benefits to eligible claimants and is funded from revenues, premiums, and other receipts of money as provided by law. To that end, the fund has to provide each Maryland hospital with written materials for distribution to obstetrical patients to inform them of a patient's rights, remedies, and limitations under the fund. All operating expenses of the fund must be paid from the money collected by or for the fund. The assets of the fund are not part of the State Treasury, and the debts and obligations of the fund are not debt of the State or a pledge of credit of the State.

The fund is authorized to (1) collect and receive premiums collected under the bill's provisions; (2) administer the payment of awards for birth-related neurological injuries; (3) invest and reinvest surplus money over losses and expenses; (4) reinsure the risks of the fund wholly or partly; (5) employ or retain persons as necessary to perform the administrative and financial transactions and other necessary and proper functions not prohibited by law; and (6) enter into contracts as necessary or proper to carry out the legal and proper business of the fund. Employees of the fund are not in the State Personnel Management System.

The bill establishes a Board of Trustees of the fund that consists of five members (four of whom must have specified expertise or affiliation and one of whom is a citizen) appointed by the Governor with the advice and consent of the Senate. Board member terms are five years, and a member continues to serve at the end of a term until a successor is appointed and qualifies. The board must choose a chair from among its members and must appoint the executive director of the fund, who serves at the pleasure of the board. The board must adopt rules, bylaws, and procedures and may adopt any policy to carry out the bill. Each member of the board is entitled to reasonable per diem compensation for each day actually engaged in the discharge of fund duties.

Each fiscal year the fund must engage an independent certified public accountant to audit the accounts of the fund and a qualified actuary to investigate the requirements of the fund and provide an actuarial opinion of the valuation of the assets and liabilities of the fund.

Fund Premiums

The fund is capitalized by annual premiums from Maryland hospitals and obstetrical physicians as well as annual surcharges paid by certain insurers.

Beginning on July 1, 2015, each metropolitan hospital (a hospital in Anne Arundel, Baltimore, Howard, Montgomery, or Prince George's counties or Baltimore City) must pay an annual premium to the fund. The premium generally must equal $175 per live birth for the prior fiscal year, as reported to DHMH; however, it is capped at $525,000 for a metropolitan hospital. The bill also establishes a minimum premium of $17,500 for a metropolitan hospital with 100 or fewer births during the prior fiscal year.

Beginning on July 1, 2015, each rural hospital (a hospital that is not located in Anne Arundel, Baltimore, Howard, Montgomery, or Prince George's counties, or Baltimore City) must also pay an annual premium to the fund. The premium generally must equal $150 per live birth for the prior fiscal year, as reported to DHMH. It is capped at $450,000 for any one rural hospital, and a rural hospital with 100 or fewer births during the prior fiscal year must pay a premium of at least $15,000.

Beginning on July 1, 2015, each physician who performed at least five births in the State during the prior fiscal year must pay an annual premium to the fund in the amount of $7,500.

For both rural and metropolitan hospitals as well as physicians, the fund is authorized to increase the premium by no more than 5% each year if the actuarial estimate of current liabilities equals or exceeds 80% of the fund's assets. When calculating hospital rates, the Health Services Cost Review Commission (HSCRC) must increase rates for obstetrics services to account for the cost of the premiums established in the bill.

Beginning on July 1, 2015, each insurer or mutual society must pay an annual surcharge to the fund in an amount equal to 2.5% of the amount collected for all net direct written premiums for medical liability coverage in the State. Each insurer issuing or issuing for delivery in the State a personal injury liability policy that provides medical malpractice liability coverage for the obstetrical practice of a physician practicing in the State must provide a credit on the physician's annual medical malpractice liability insurance premium in an amount that will produce premiums that are not excessive, inadequate, or unfairly discriminatory, as determined by the Insurance Commissioner. Each insurer issuing or issuing for delivery in the State a personal injury liability policy that provides medical malpractice liability coverage for the obstetrical services of a hospital in the State must provide a credit on the hospital's annual medical malpractice liability insurance premium in an amount that will produce premiums that are not excessive, inadequate, or unfairly discriminatory, as determined by the Insurance Commissioner.

Current Law: State law distinguishes between ordinary negligence claims and medical malpractice claims. The statute of limitations for filing a medical malpractice claim varies with the claimant's age and type of injury.

Parties of medical malpractice claims are required to file a claim with HCADRO. Claims may proceed through the arbitration process or claimants may waive participation and instead file in the circuit court for adjudication by trial. Claimants may receive awards for economic and noneconomic damages. Economic damages generally include past and future medical expenses and lost wages; noneconomic damages generally include pain and suffering.

The Courts and Judicial Proceedings Article sets various caps on noneconomic damages in civil actions depending on the type of action and when the cause of action arose. In an action for damages for personal injury or death (excluding medical malpractice), the cap is $815,000 for causes of action arising between October 1, 2015, and October 1, 2016. This limitation applies in a personal injury action to each direct victim of tortious conduct and all persons who claim injury through that victim. In a wrongful death action in which there are two or more claimants or beneficiaries, an award of noneconomic damages may not exceed 150% of the applicable cap, regardless of the number of claimants or beneficiaries. The cap applies separately to a wrongful death claim and a survival action.

For medical malpractice actions, the cap was frozen at $650,000 for causes of action arising between January 1, 2005, and December 31, 2008, increasing by $15,000 each year beginning on January 1, 2009. For causes of action arising in 2015, the cap is $755,000. The cap 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, claimants, plaintiffs, beneficiaries, or defendants. However, if there is a wrongful death action in which there are two or more claimants or beneficiaries, the total amount awarded may not exceed 125% of the cap, or $943,750 in 2015.

The Insurance Article requires that each policy insuring a health care provider against damages due to medical injury arising from providing or failing to provide health care must contain provisions that are consistent with certain requirements in the Courts and Judicial Proceedings Article. Additionally, the policy must authorize the insurer, without restriction, to negotiate and effect a compromise of claims within the limits of the insurer's liability, if the entire amount settled on is to be paid by the insurer.

A policy insuring a health care provider may not include coverage for the defense of a health care provider in a disciplinary hearing arising out of the practice of the health care provider's profession. However, such a policy may be offered and priced separately from a policy against damages from medical injury arising from providing or failing to provide adequate care.

Background: Virginia, Florida, and New York have birth-related neurological injury compensation plans. Florida enacted the Birth-Related Neurological Injury Compensation Plan in 1988. The Virginia Birth-Related Neurological Injury Compensation Act was enacted in 1987. Both programs provide compensation for medical and certain other expenses of children with severe birth-related neurological injuries. The injury must have been caused by oxygen deprivation or mechanical injury, which occurred during the labor, delivery, or resuscitation in the immediate post-delivery period in a hospital. Doctors and hospitals can choose whether to participate in the compensation plans. More recently, in 2011, New York enacted the New York Birth-Related Neurological Injury Compensation Act to provide a program whereby families of infants who are neurologically injured at birth have an option for compensation other than by suing the physician.

According to a 2008 *Law Review* article published by Boston University School of Law, both the Virginia and Florida programs are largely considered successful, although the Virginia program has suffered from funding concerns more recently.

The Joint Legislative Audit and Review Commission (JLARC) of the Virginia General Assembly published a 2002 review of the Virginia Birth-Related Neurological Injury Compensation Program which concluded that, while the birth injury program (BIP) "appears largely beneficial to children served by the program, compared to Virginia's capped tort system… it is less clear that the program has achieved the societal benefits intended, such as the availability of obstetrical care in rural areas of the State." In 2002, participants in BIP were satisfied with their compensation, but the fund itself suffered from a long-term deficit in terms of unfunded liability. This was due in large part to a failure to adequately assess fees from eligible payors.

State Fiscal Effect:

Department of Health and Mental Hygiene

General fund expenditures for DHMH increase by $126,870 in fiscal 2016, which reflects a 90-day start-up delay, to hire one full-time health policy analyst and one full-time nursing program consultant to staff PCAC and develop required protocols and best practices. The health policy analyst and nursing program consultant must collect data, review and analyze current best practices and outcome measures employed in obstetrical cases (including exploring the use of "virtual grand rounds"), engage the existing regional Perinatal Center Network in dialogues regarding improving obstetrical care outcomes and quality of care, and make recommendations to improve or upgrade assistance and communication to health facilities or both. PCAC currently meets for sporadic meetings every five to six years; therefore, this estimate assumes a 90-day delay in reconvening PCAC as required under the bill. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	$117,422
Operating Expenses	9,448
Total FY 2016 State Expenditures	**$126,870**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Office of Administrative Hearings

General fund expenditures for OAH increase by $119,514 beginning in fiscal 2016. This estimate reflects the cost of hiring two full-time ALJs to hear claims. The estimate assumes the judges begin January 1, 2016, so judges are ready to begin hearing claims beginning February 2016 – which assumes a slight delay in claims being made to the fund. (Although monies begin accruing to the new fund on the bill's effective date of July 1, 2015, only infants born on or after January 1, 2016, are eligible as claimants under the bill.) The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes contractual expenses for purchasing transcripts from court reporters for administrative hearings. This estimate is based on the following assumptions:

- According to an actuarial study done by Pinnacle Actuarial Resources, Inc., which analyzes comparable data from Virginia and Florida no-fault birth injury programs, Maryland can anticipate that a qualifying birth injury occurs in roughly 1 out of every 10,000 live births. Thus, out of the State's total 66,510 births, approximately 7 qualifying infants are born each year.
- OAH estimates that a valid claim for a qualifying birth injury takes 10 to 20 days to hear and 40 days to write.
- The seven qualifying claims each year account for 3,350 hours annually.
- ALJs are available 1,744 hours per year; therefore, at least two additional judges are needed.
- Although an estimated seven valid claims are presented annually, the number of claims OAH must hear is likely to be higher because some claims will be rejected, which increases time requirements.
- As claims may only be made for births occurring on or after January 1, 2016, only four valid claims are presented in fiscal 2016.

Positions	2
Salaries and Fringe Benefits	$105,109
Court Transcripts	5,250
Operating Expenses	9,155
Total FY 2016 State Expenditures	**$119,514**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Medicaid

Medicaid expenditures increase by $1,885,029 (60% federal funds, 40% general funds) annually beginning in fiscal 2016 due to the bill's requirement that HSCRC increase hospital rates for obstetric services to account for the cost of the per-birth premium. Medicaid expenditures account for approximately 20.2% of total hospital revenues annually. Federal fund revenues also increase by $1,131,017 to reflect federal matching funds.

Future year Medicaid expenditures reflect the assumption that Medicaid expenditures continue to account for 20.2% of total hospital revenues annually.

Other Agencies

The Judiciary (Administrative Office of the Courts) advises that the bill has operational and fiscal implications for the Judiciary with regard to record retention because it extends the statute of limitations for birth injury claims from the standard statute of limitations (three or five years, depending on the nature of the claim) to 21 years. Although the extension may require significant adjustment of court record retention schedules, the Judiciary was not able to provide a specific fiscal impact. The Department of Legislative Services (DLS) agrees that there could be a record retention impact on the Judiciary; however, any such impact has not been accounted for in this estimate.

HSCRC advises that it can set rates to account for obstetric premiums and adjust rates for providers' premiums with existing resources.

Likewise, the State Board of Physicians and HCADRO are not materially affected.

No-Fault Birth Injury Fund Fiscal Effect:

Nonbudgeted Fund Revenues

Revenues for the fund increase by $25,661,825 annually, beginning in fiscal 2016. Although claimants do not become eligible to receive awards until January 1, 2016, the fund begins accruing premiums from physicians, hospitals, and medical professional liability insurers beginning July 1, 2015.

The estimate includes $7 million from the required surcharge for medical professional liability insurers. This amount is based on an actuarial report published by Pinnacle

Actuarial Resources, Inc., which assumes that 2.5% of the amount collected for all net direct written premiums for medical liability coverage in the State equates to approximately $7 million.

The estimate also includes $9,330,000 from physician premiums. According to the State Board of Physicians, there are 1,244 licensed self-identified obstetrical physicians in Maryland. The estimate assumes all 1,244 self-identified obstetrical physicians perform at least five births annually and pay the $7,500 annual premium. This is likely an undercount for physician-paid premiums because some other physicians may be performing obstetric services without announcing their practice to the board.

The estimate includes $9,331,825 from hospital premiums. According to the Maryland Hospital Association, there are 12 rural hospitals and 20 metropolitan hospitals in the State that delivered approximately 66,510 babies in 2014. Although there are premium floors and caps for both rural and metropolitan hospitals, none of the rural hospitals hit the floor or the cap. However, six of the metropolitan hospitals hit the cap, whereas none hit the floor. The estimate assumes relatively stable birth rates for fiscal 2016 and annually thereafter.

Nonbudgeted Expenditures

Expenditures for the fund increase by $1,278,488 in fiscal 2016, which accounts for a full-time executive director, board compensation, required annual actuarial and audit reports, distribution of pamphlets, and awards to claimants. The estimate assumes a 90-day start-up delay in hiring the executive director – related to a likely delay in the Governor appointing the Board of Trustees and the Board of Trustees appointing the executive director. The estimate for the executive director's position includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate includes $50,000 annually for per diem expenses for members of the Board of Trustees, based on five board members receiving $500 per day for approximately 20 days per year – including in fiscal 2016 when the board must meet more frequently to establish the fund. Annual costs of $125,000 are assumed to perform the required actuarial study and audit. The estimate also includes $10,500 annually for the cost of publishing materials to inform obstetric patients about the fund and their rights under the bill. This assumes a pamphlet with the necessary information costs approximately $0.15 each, and that an average of 70,000 individuals must receive the materials.

Finally, the estimate includes $1 million in payments to claimants in fiscal 2016. The estimate assumes that, since claimants cannot begin receiving funds until January 1, 2016, at the earliest, only four claimants receive awards in fiscal 2016. Annually thereafter, however, an additional seven claimants receive awards each year. Each claimant is assumed to be awarded the maximum $100,000 one-time lump sum payment as well as

approximately $150,000 each year to cover actual expenses for qualified health care costs. As these expenses are incurred for the lifetime of the claimant, they have a cumulative impact on the payments from the fund. Any awards associated with loss of earnings are not reflected in the estimate, as they are not payable until the eighteenth birthday of the infant – thus, additional liability is incurred beginning in fiscal 2034 for these costs.

Position	1
Salary and Fringe Benefits	$88,264
Per diem Expenses	50,000
Claim Payments	1,000,000
Pamphlets	10,500
Actuarial and Audit Reports	125,000
Operating Expenses	4,724
Total FY 2016 Expenditures	**$1,278,488**

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. As noted above, claim payments in future years reflect the compounding effect of paying for claimants' actual lifetime expenses. Thus, in fiscal 2020, payments escalate to $5.5 million.

Based on these revenue and expenditure estimates, the fund is expected to receive approximately $128.3 million over the five-year period from fiscal 2016 through 2020. Over that same period, expenditures are expected to total approximately $18.2 million. Thus, the fund balance could be as high as $110 million by the end of fiscal 2020. This estimate does not take into account any interest that may accrue or other investments that may be made. If the number of claimants is greater than the seven per year anticipated, payments increase. Likewise, if the awards for lifetime actual expenses are greater than $150,000 per year per claimant, expenditures also increase.

Small Business Effect: Obstetricians are required to pay premiums to the fund beginning in fiscal 2016. These increased expenditures for premiums may be defrayed by the bill's requirement that medical professional liability insurers provide a credit on the physician's annual medical malpractice liability insurance premium in an amount that will produce premiums that are not excessive, inadequate, or unfairly discriminatory. The credit must be determined by the Insurance Commissioner. It is unclear whether this credit will completely defray, partially defray, or even wind up being more than the required premiums.

Additional Comments: Beginning in fiscal 2016, costs to commercial insurers increase by an estimated $3.5 million annually as a result of increased hospital rates associated with the cost of the per-birth premium. Commercial insurance comprises about 35% of total

hospital revenues annually. Commercial insurers may pass this cost on to consumers by increasing premiums.

Additional Information

Prior Introductions: SB 798 of 2014 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1337, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Cross File: Although designated as a cross file, HB 553 (Delegate Morhaim, *et al.* - Health and Government Operations and Judiciary) is not identical.

Information Source(s): Baltimore City; Howard and Montgomery counties; Maryland Health Claims Alternative Dispute Resolution Office; Department of Health and Mental Hygiene; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; University of Maryland Medical System; Pinnacle Actuarial Resources, Inc., Joint Legislative Audit and Review Commission; Boston University School of Law; Department of Legislative Services

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