

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 195

(Senator Klausmeier)

Education, Health, and Environmental Affairs

Health and Government Operations

**State Board of Physicians - Medical Professional Liability Insurance Coverage -
Verification, Publication, and Notification Requirements (Janet's Law)**

This bill requires the public practitioner profile for each licensed physician in the State maintained by the State Board of Physicians (MBP) to include information as to whether the physician maintains medical professional liability insurance, as reported by the physician to MBP. (The bill also establishes that other items currently included in the profile are to be as reported by the physician.) If a physician reports such information, the physician must, on request of MBP, provide verification or other documentation of the information within 25 business days after receiving the request. Further, each licensed physician practicing medicine in the State must notify a patient in writing if the physician does not carry professional liability insurance coverage, or if the physician's coverage has lapsed for any period of time and has not been renewed. Each licensed physician who does not carry professional liability insurance coverage must conspicuously post such information where the licensee practices. MBP must develop language for the required notification.

Fiscal Summary

State Effect: MBP can modify its online renewal process to collect the requisite medical professional liability insurance information from licensed physicians, post the information on practitioner profiles, and develop the notification language with existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Notification must (1) be provided at a patient's first visit during any period in which the licensee does not maintain medical professional liability insurance (unless the visit is for the purpose of receiving free incidental medical care) and as part of each informed consent obtained before performing any discussed or offered procedure or operation; (2) signed by the patient at the time of the patient's visit or the informed consent is signed; and (3) kept in the patient's records.

Current Law/Background:

Medical Professional Liability Insurance and Malpractice Actions

Medical professional liability insurance (also known as medical malpractice insurance), covers doctors and other professionals in the medical field for liability claims relating to patient treatment. According to the Maryland Insurance Administration (MIA), the availability and affordability of medical professional liability insurance affects the accessibility of high-quality health care to Maryland residents. Premium rates in Maryland increased significantly between 2002 and 2005 but have remained relatively stable since 2006.

In health care malpractice actions, there are two primary kinds of damages. Noneconomic damages include payment for pain, suffering, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury; economic damages, in contrast, include payment for loss of earnings and medical expenses and are not limited to a maximum amount.

Under the Courts and Judicial Proceedings Article, for health care malpractice causes of action arising in 2017, the cap for noneconomic damages is \$785,000. 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 \$981,250 in 2017.

Physician Practitioner Profiles

MBP must create and maintain a public practitioner profile for each licensed physician and provide "appropriate and accessible" links to the profiles from the board's website. In addition to specified disciplinary information, the profiles must include the number of medical malpractice final court judgments and arbitration awards against the licensee within the most recent 10-year period for which all appeals have been exhausted, as

reported to the board. The board’s “general disclaimer” for licensee profiles notes that this information is reported by insurance providers.

The profiles must also include medical education and practice information about the licensee, including (1) the licensee’s medical school and date of graduation; (2) a description of any internship and residency training; (3) a description of any specialty board certification; (4) the name of any hospital where the licensee has medical privileges, as reported to the board; (5) the location of the licensee’s primary practice setting; and (6) whether the licensee participates in Medicaid.

Coverage Requirements for Maryland Physicians Applied by Hospitals and Health Plans

Maryland does not require physicians to carry medical professional liability insurance. However, according to the Medical Mutual Liability Insurance Society of Maryland (MMLIS), the largest medical professional liability insurance carrier in the State, physicians are required to carry medical professional liability insurance limits of \$1 million per occurrence or claim and \$3 million per annual aggregate in order to obtain hospital credentialing and to participate in health plans. The vast majority of physicians insured by MMLIS carry these limits (fewer than 12 physicians insured by MMLIS carry limits below these amounts). MMLIS further advises that, while it is possible that some of its insured physicians do not practice in hospitals or participate in health plans, it does not track this information – nor is it possible to estimate how many licensed physicians in Maryland do not currently carry medical professional liability insurance. MIA and MBP are similarly unable to estimate this number, as neither entity collects this information.

Other State Requirements Related to Coverage

According to the American Medical Association, at least seven states (Colorado, Connecticut, Kansas, Massachusetts, New Jersey, Rhode Island, and Wisconsin) require physicians to carry minimum levels of medical professional liability insurance, ranging from \$100,000 to \$1 million per occurrence and \$300,000 to \$3 million per annual aggregate. At least another seven states (Indiana, Louisiana, Nebraska, New Mexico, New York, Pennsylvania, and Wyoming) require physicians to carry minimum levels of coverage to qualify for state liability reforms, including caps on damages or patient compensation funds.

In addition, at least five states (Alaska, Florida, Montana, Ohio, and Oregon) require physicians or similar providers to notify a patient if they do not have medical professional liability insurance.

Additional Information

Prior Introductions: SB 5 of 2011, a bill containing similar notification provisions, passed the Senate and received a hearing in the House Health and Government Operations Committee, but no further action was taken on the bill. SB 402 of 2010, another bill containing similar notification provisions, passed the Senate but received an unfavorable report from the House Health and Government Operations Committee. Bills containing similar notification provisions were also introduced in the 2009 session.

Cross File: HB 957 (Delegate Miele, *et al.*) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene; Maryland Insurance Administration; American Medical Association; Medical Mutual Liability Insurance Society of Maryland; Department of Legislative Services

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Analysis by: Sasika Subramaniam

Direct Inquiries to:
(410) 946-5510
(301) 970-5510