

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

House Bill 774 (Delegate Harkins, *et al.*)
Judiciary

Health Care Malpractice Claims - Attorneys' Fees

This bill establishes the situations in which an attorney in a health care malpractice claim may accept payment on a contingency fee basis. It provides for an “offer of settlement” between a health care provider and a medical injury claimant, specifies the amount of time by which a health care provider may deliver an offer of settlement to a claimant, authorizes the Director of the Health Claims Arbitration Office to extend this time period, and specifies that the health care provider must file certain items related to the statement with the director. It also stipulates that whether a claimant accepts or rejects an offer of settlement, the health care provider may not contest liability for the claim before the arbitration panel or on judicial review but may contest the amount of damages.

The bill is applied prospectively.

Fiscal Summary

State Effect: None. The bill’s requirements could be handled within existing budgeted resources.

Local Effect: None.

Small Business Effect: Meaningful effect on small businesses as discussed below.

Fiscal Analysis

Bill Summary: For an offer of settlement filed by a health care provider, a claimant’s attorney is entitled to payment: (1) from the inception of representation to the date of settlement, if the claimant accepts an offer of settlement; or (2) from the inception of representation to the date on which the offer of settlement was filed, plus a contingency fee

not to exceed 40% of the amount recovered in excess of the amount specified in the statement, if the claimant rejects the offer of settlement.

This bill may not be construed to prevent an attorney from charging a contingency fee if: (1) a medical injury claim is satisfied; (2) the health care provider failed to file an offer of settlement; or (3) a medical injury claim is settled prior to the filing of a medical injury claim.

Small Business Effect: This bill precludes a health care provider from contesting liability for a malpractice claim if an offer of settlement is made regardless of whether the offer is accepted. This makes it more difficult for providers to defend themselves and limit their liability.

The bill would also limit the amount an attorney may receive in contingency fees in cases where an offer of settlement is rejected by the claimant. It also prohibits an attorney from collecting a contingency fee in cases where a settlement offer is accepted. This may reduce the earnings of attorneys in malpractice cases.

Information Source(s): Judiciary (Administrative Office of the Courts), Insurance Administration, Department of Fiscal Services

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