

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

House Bill 1020 (Delegate Montague. *et al.*)

Economic Matters

Civil Actions - Health Care Malpractice - Carriers

This bill provides that an enrollee of an insurer, nonprofit health service plan, or HMO (carrier) may bring a health care malpractice action against the medical director of the carrier if the enrollee's injury or death was proximately caused by the failure of the carrier to provide or approve a covered service. In such an action, the medical director of the carrier must be named as a party defendant but the carrier may not be named as a party defendant. If a judgement is made against the medical director, the carrier must indemnify the medical director, unless the medical director acted in contravention to the carrier's established procedures and protocols.

This bill does not apply to any cause of action arising before October 1, 1998.

Fiscal Summary

State Effect: Potential increase in general fund expenditures. Minimal increase in general fund revenues.

Local Effect: Potential increase in expenditures for local jurisdictions.

Small Business Effect: Potential meaningful.

Fiscal Analysis

State Effect: This bill establishes the liability of carriers, through their medical directors, in a civil action for damages that an enrollee suffers as a result of a health care treatment decision. Consequently, costs to carriers could increase for the following reasons:

- the potential increase in liability faced by carriers could necessitate additional

liability insurance;

- potential damages paid by the carrier; and
- health care costs could increase if carriers become more defensive in their utilization review decisions due to concerns over liability issues.

If carriers incur increased costs, some of the increased costs may be passed onto the State Employee Health Benefit Plan. The extent of the increase would depend on the number of medical malpractice cases filed against carriers and the findings and judgement in those cases. The increase could be significant.

The bill could potentially increase the number of medical malpractice claims filed. It is anticipated that most medical malpractice claims would be filed in circuit court. Since clerks of court are compensated by the State, the increase in caseloads could result in additional expenditures for the State if there is a need for additional personnel in the clerk's office in the future.

As a result of this bill, future Medicaid capitation rates to managed care organizations (MCOs) could increase to accommodate the increased costs incurred by those MCOs that are also HMOs.

Any workload increase for the Health Claims Arbitration Office could be handled with existing resources.

If carriers raise premiums as a result of this bill, then general fund revenues could increase by an indeterminate minimal amount as a result of the State's 2% insurance premium tax on increased premiums. The State's premium tax is only applicable to "for-profit" insurance carriers. In addition, general fund revenues could increase by an indeterminate minimal amount in fiscal 1999 since the bill's requirements could subject insurance companies to rate and form filings. Each insurer (except HMOs) that revises its rates and amends its insurance policy must submit the proposed change(s) to the Insurance Administration and pay a \$100 rate and form filing fee(s).

Local Expenditures: Expenditures for local jurisdictions could increase depending on the number of additional medical malpractice cases filed in circuit courts.

In addition, expenditures for local jurisdiction employee health benefits could increase, depending upon the current type of health care coverage offered and number of enrollees. **Small Business Effect:** For the reasons discussed above, the effect on health insurance premiums for small businesses and self-employed individuals cannot be determined at this point, although it could be significant.

Information Source(s): Department of Health and Mental Hygiene (Licensing and Certification), Health Claims Arbitration Office, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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