SB 840

Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 840 (Senator Brochin)
Judicial Proceedings

Maryland Physicians Noneconomic Damages Reimbursement Fund

This bill creates the Maryland Physicians Noneconomic Damages Reimbursement Fund to fully subsidize the final awards or verdicts for noneconomic damages over $500,000 against defendant physicians practicing medicine in the State.

The bill takes effect January 1, 2005.

Fiscal Summary

State Effect: Special fund revenues would increase by $11.9 million in FY 2005 and special fund expenditures could increase by at least $407,600, not counting any potential awards from the new fund. Future year estimates reflect annualization and the physician annual fee change from $750 to $500.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
SF Revenue	$11,945,000	$8,120,000	$8,120,000	$8,120,000	$8,120,000
SF Expenditure	407,600	576,800	605,700	636,600	669,600
Net Effect	$11,537,400	$7,543,200	$7,514,300	$7,483,400	$7,450,400

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

Local Effect: None.

Small Business Effect: Minimal. Small business physicians would be required to pay $750 to the fund in 2005, and $500 annually thereafter. Some physicians who are found liable for medical malpractice may benefit from reimbursement from the fund.

Analysis

Bill Summary: The special fund consists of fees required to be paid by physicians and hospitals and any other money provided to the fund by law. The State may not provide general fund appropriations to the fund.

There is a board of directors, which must formulate policy for the fund. A board member may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations. The fund's executive director may appoint and remove staff of the fund in accordance with the provisions of the State Personnel and Pensions Article. The executive director must determine compensation for the staff, subject to review by the Department of Budget and Management (DBM). The fund must appoint a financial management committee to manage the fund, and invest funds when appropriate. The Legislative Auditor may conduct fiscal audits and compliance audits of the accounts and transactions of the fund each year instead of every two years.

Each physician who practices medicine in the State must pay to the fund: (1) $750 the first year of the fund; and (2) $500 each year thereafter. Each hospital licensed in the State must pay an annual fee of $10,000. The medical malpractice insurer of a physician licensed in the State may apply to the fund for reimbursement from the fund for any amount in excess of $500,000 of a final award or verdict for noneconomic damages over $500,000. To qualify for reimbursement from the fund, a physician must: (1) be domiciled in the State; (2) own, lease, or rent a primary residence in the State and regardless of the person's domicile, reside in the State for more than one year; (3) maintain a main or branch office in the State; or (4) have filed as a State resident for income tax purposes.

Current Law: Noneconomic damages, which include pain, suffering, and disfigurement, are subject to the current cap of $635,000, which increases by $15,000 annually every October 1.

Background: Recently, national attention has focused on what some are calling a medical malpractice insurance crisis. There is evidence in at least some parts of the country to support the claim that medical malpractice insurance is becoming dangerously unaffordable and/or unavailable, especially for individuals practicing in certain high-risk specialties such as obstetrics, neurosurgery, and orthopedic surgery. Certain areas have seen steep premium increases, the withdrawal of major insurance companies from the medical malpractice market, insurer-instituted moratoriums on the issuance of new policies, the closure of trauma centers and hospital maternity wards, the elimination of obstetrics from OB/GYN practices, an exodus of physicians, and increases in early retirements.

In 2003, the federal General Accounting Office (GAO) published a report that studied the extent of increases in medical malpractice insurance rates, analyzed the factors contributing to these increases, and identified any market changes that might make this period of rising insurance premiums different from previous such periods. GAO found that the largest contributor to increased premium rates was insurer losses on medical malpractice claims. Other contributing factors include decreased investment income, artificially low premium rates adopted while insurers competed for market share during boom years, and higher overall costs due largely to increased reinsurance rates for medical malpractice insurers.

Until recently, the medical malpractice insurance industry in Maryland had not experienced the steep rate increases that had occurred in other states. In June 2003, the Medical Mutual Liability Insurance Society of Maryland, the insurance provider to most of the State's private practice physicians, requested a 28% rate increase in medical malpractice insurance premiums. On August 15, 2003, the Maryland Insurance Commissioner approved the rate increase. The new rates became effective January 1, 2004. Opponents of the rate increase argued that a 3.7% rate increase was sufficient and that Medical Mutual was seeking to set aside more money than it would likely need for malpractice claims.

In response to soaring rates, other states have been considering a variety of measures to alleviate the problems in the medical community created by the medical malpractice insurance crisis. These initiatives include tort reform measures such as caps on noneconomic and punitive damages; limits on medical care provider liability; and reforms to statutes of limitations, collateral source rules, and good faith hearings. Other measures include changes to physician discipline statutes and increased regulation of insurers.

The U.S. Congress has considered the medical malpractice insurance crisis several times. The most recent bill would have capped noneconomic damages at $250,000, limited the availability of punitive damages, required lawsuits to be brought within three years of the date of injury or one year of discovery, and preempted State law unless it imposes greater protections for health care providers and organizations from liability, loss, or damages.

In calendar 2003, there were 15,019 medical doctors and 302 osteopaths actively practicing in Maryland. Medical Mutual Liability Insurance Society of Maryland's direct written premiums for calendar 2004 are projected to be $113.7 million to provide malpractice insurance to 6,200 physicians. Annual premiums range from about $10,000 for a general practitioner to over $100,000 for certain specialists such as obstetricians. Medical Mutual covers approximately 80% of private practice physicians. Many other physicians who are associated with or employed by hospitals or professional practice

groups receive partial or full malpractice insurance subsidies from the hospitals or practice groups.

According to a *Public Citizen* report, about 3% of Maryland physicians have been responsible for 51% of malpractice payouts to patients since 1990. Conversely, 89.4% of Maryland physicians have never made a malpractice payout. Only 21% (37 of 180) of physicians who made three or more malpractice payouts since 1990 were disciplined by the State Board of Physicians.

State Excess Liability Pools

Excess liability pools and patient compensation funds supplement a doctor's professional liability coverage and provide either coverage or payment for any valid medical malpractice claim that exceeds the amount of the doctor's primary policy. Generally, the pool or fund is financed through a special surcharge or assessment paid by physicians who participate in the pool or fund. Eight states have excess liability or patient compensations funds. They are Indiana, Kansas, Louisiana, Nebraska, New Mexico, Pennsylvania, South Carolina, and Wisconsin. In these states, the annual surcharges vary widely, from $1,000 to $25,000 per physician. Two states base the surcharge on a percentage of malpractice premiums paid.

State Revenues: Fund revenues could be $11,945,000 in fiscal 2005 from the fees paid by physicians and hospitals. This estimate reflects the bill's January 1, 2005 effective date and assumes fees are collected in the first fiscal year of operation. There are about 15,300 practicing physicians and 47 hospitals in the State that would each pay $750 and $10,000 fees respectively. Future year estimates reflect the reduction of the physicians' required annual fee to $500 and assume the number of physicians and hospitals remains constant.

State Expenditures: Fund expenditures could be $407,561 in fiscal 2005, which accounts for the bill's January 1, 2005 effective date. This estimate reflects the cost of eight new positions, including an executive director, accountants, computer network specialists, and support staff to manage the fund and handle claims administration. The estimate also reflects $100,000 to contract with a third-party administrator to collect fees from covered physicians and hospitals. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	$244,461
Billing Contract	100,000
Other Operating Expenses	63,100
Total FY 2005 State Expenditures	**$407,561**

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Fund expenditures could also increase by a significant amount depending on the number of applications made to the fund for reimbursement for any noneconomic damages award amount in excess of $500,000. According to a 2003 *Public Citizen* report, there were 266 malpractice awards made in Maryland in 2002, for which, the average payout was $276,000. There were three awards of over $1 million each in 2002; however, it is unknown how many future awards may be in excess of $500,000. It is assumed that very few applications would be made to the fund in any given year since average awards in the State are less than the $500,000 malpractice insurers must still cover. However, any applications made to the fund would be for large awards.

Review of fund personnel classification and compensation could be handled with existing DBM resources. Annual audits of the fund could be handled with existing Department of Legislative Services resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): *January 15, 2004 Press Release*, *Public Citizen*; *Medical Malpractice: Tort Reform (2003)* Health Policy Tracking Service; *Medical Malpractice – Implications of Rising Premiums on Access to Health Care (August 2003)* U.S. General Accounting Office; *More Medicare Cuts in Reimbursements* (December 2002), Patricia A. Daily, M.D; American Medical Association; Department of Health and Mental Hygiene (Health Services Cost Review Commission, Maryland Health Care Commission, Medicaid); Department of Budget and Management (Employee Benefits Division); Department of Legislative Services (Office of Legislative Audits)

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