

Department of Legislative Services
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FISCAL AND POLICY NOTE

Senate Bill 436
Finance

(Senator Kelley, *et al.*)

Medical Malpractice Insurance - Rates and Rate Filings

This bill provides that a medical malpractice insurance premium rate is excessive if: (1) the rate does not reflect the total investment income that the insurer reasonably can be expected to earn on all its assets during the period the rate is in effect; or (2) the rate for any other reason is unreasonably high for the insurance coverage provided. Rate filings for medical malpractice insurance must include information explaining the methodology the filer used to reflect the total investment income.

Fiscal Summary

State Effect: Maryland Insurance Administration (MIA) special fund revenues could increase by about \$10,000 in FY 2005 only from the \$125 rate and form filing fee charged to approximately 80 insurers who write medical malpractice policies in the State. MIA could handle the review of rate filings with existing budgeted resources.

Local Effect: None.

Small Business Effect: Potential meaningful. The bill may discourage insurers from writing insurance in the State, thereby increasing health care providers' rates, or the bill may keep rates down so as to be considered reasonable by the Insurance Commissioner.

Analysis

Current Law: All premium rates established by insurers who issue property, casualty, surety, marine, and wet marine and transportation insurance must be set in accordance with certain provisions. When setting rates, consideration must be given to investment income from unearned premium reserve and reserve for losses. Unless the insurer

demonstrates that a proposed rate is not excessive, inadequate, or unfairly discriminatory, the Insurance Commissioner may disapprove the filing.

Each insurer must maintain unearned premium reserves on all policies in force with respect to property, casualty, and surety insurance.

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; reforms to states 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.

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.

Additional Comments: The bill's provisions are unclear what is meant by the term "total investment income." If the bill requires insurers to consider total investment income that includes income used to develop rates for other lines of insurance written by the insurer, insurers could discontinue writing medical malpractice insurance in the State. The more investment income a carrier earns, the lower the carrier may set rates and still cover costs. If "total investment income" includes all investment income a carrier earns, and not just investment income used to develop its malpractice rates, a carrier's malpractice insurance rates would have to be set artificially low.

Additional Information

Prior Introductions: None.

Cross File: HB 1301 (Delegate Hurson) – Economic Matters.

Information Source(s): Department of Health and Mental Hygiene (Board of Physicians, Board of Nursing, Medicaid), Maryland Insurance Administration, Department of Legislative Services

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