

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 438
Finance

(Senator Kelley, *et al.*)

Medical Malpractice Insurance - Excessive Rates

This bill provides that a medical malpractice insurance premium rate is excessive if: (1) the rate does not reflect all dividends, rate credits, and any other form or type of refund or credit that the insurer has issued, or reasonably may be expected to issue, during the period the rate is in effect; or (2) the rate for any other reason is unreasonably high for the insurance coverage provided.

Fiscal Summary

State Effect: Minimal Maryland Insurance Administration (MIA) special fund revenues from the \$125 rate and form filing fee in FY 2005 only. MIA could handle the review of rate filings with existing budgeted resources.

Local Effect: None.

Small Business Effect: Potential meaningful. The bill's requirements may be prohibitive and discourage insurers from writing insurance in the State, thereby increasing health care providers' rates. The bill may also keep rates down in order 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. Rates may not be excessive, inadequate, or unfairly discriminatory. Unless the insurer demonstrates that a proposed rate is not excessive,

inadequate, or unfairly discriminatory, the Insurance Commissioner may disapprove the filing.

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 Information

Prior Introductions: None.

Cross File: None.

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

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