

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 708  
Finance

(Senator Brochin)

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Medical Malpractice Insurance - Policies with Deductibles

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This bill requires each insurer that writes medical malpractice policies in the State to offer, in addition to a basic policy, additional policies with deductibles of \$10,000, \$25,000, and \$50,000. The Maryland Insurance Administration (MIA) must report to the Senate Finance Committee on or before November 30, 2006 on the implementation of this bill.

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Fiscal Summary

**State Effect:** 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. The reporting requirements could be handled with existing MIA budgeted resources.

**Local Effect:** None.

**Small Business Effect:** Meaningful. Providing high-deductible policies could substantially lower health care providers' malpractice insurance premiums.

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Analysis

**Current Law:** There are no deductible requirements imposed on medical malpractice insurance policies.

**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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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