

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1230

(Delegate Shank, *et al.*)

Judiciary

Courts - Health Care Injuries - Standard of Proof for Liability for Emergency
Care

This bill provides that, unless the factual findings about an act or omission are supported by clear and convincing evidence, an individual is not civilly liable for an act or omission in providing assistance or medical aid to a victim in a medical facility if: (1) the victim initially visited the facility requesting examination or treatment for an emergency medical condition; (2) the individual is a health care provider; (3) the treatment is given to the patient before the patient's condition is stabilized; (4) the timing and type of diagnosis and treatment are not affected by financial considerations; and (5) the individual is acting in full compliance with the federal Emergency Medical Treatment and Active Labor Act (EMTALA) and the regulations adopted under the Act.

The bill does not apply to causes of action arising before June 1, 2005.

Fiscal Summary

State Effect: The bill would not materially affect governmental finances or operations.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: An individual licensed to provide medical care and specified emergency responders are not civilly liable for any act or omission in giving any assistance or

medical care if: (1) the act or omission is not one of gross negligence; (2) the assistance or medical care is provided without fee or other compensation; and (3) the assistance or medical care is provided at the scene of an emergency, in transit to a medical facility, or through communications with personnel providing emergency assistance.

Other individuals are not civilly liable for an act or omission in providing medical aid to a victim at the scene of an emergency, if: (1) the assistance or aid is provided in a reasonably prudent manner; (2) the assistance or aid is provided without a fee or other compensation; and (3) the individual relinquishes care of the victim when someone who is licensed or certified to provide medical care or services becomes available to take responsibility.

A volunteer health care provider or physician who provides health care services without compensation to a person seeking health care at or through a charitable organization or who renders health care services without compensation to a person seeking health care through a charitable organization chartered to provide health care services to homeless or indigent individuals is not liable for an amount in excess of any applicable limit of insurance coverage for civil damages for an act or omission resulting from rendering such services unless the act or omission constitutes willful or wanton conduct, gross negligence, or intentionally tortious conduct. Similarly, a volunteer physician who without compensation provides services or performs duties as a physician for a school sports program is not liable for any damages for any act or omission resulting from the provision of services or the performance of duties unless the act or omission constitutes willful or wanton conduct, gross negligence, or intentionally tortious conduct.

Background: EMTALA requires a hospital that receives Medicare funds to treat an individual who comes to the hospital with an emergency medical condition regardless of the ability to pay. If a hospital is capable of providing the necessary emergency care to a patient and an emergency medical condition is found to exist, the hospital is prohibited from refusing to provide treatment to the individual or from transferring the patient to another medical facility without good cause.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2005
mp/jr

Analysis by: T. Ryan Wilson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510