

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

House Bill 1215

(Delegate Barve, *et al.*)

Judiciary

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Courts - Medical Injury Recoveries - Attorney's Fees

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This bill restricts the fee an attorney may charge in prosecuting or settling a health care malpractice claim.

The bill takes effect June 1, 2005.

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Fiscal Summary

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

**Local Effect:** None.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** An attorney may not contract for or collect a contingency fee for representing a person having a claim against a health care provider for damages due to a medical injury occurring on or after June 1, 2005, in excess of the following limits: (1) 40% of the first \$100,000 recovered; (2) 33.3% of the next \$100,000 recovered; (3) 25% of the next \$100,000 recovered; and (4) 15% of any amount recovered in excess of \$300,000.

These limitations apply regardless of whether the amount is recovered by settlement, award, or verdict, or the person for whom the amount is recovered is a responsible adult,

a minor, or a person who is mentally incompetent. For purposes of the bill, the attorney's office-overhead costs or charges are not deductible disbursements or costs.

A division of fees between an attorney who contracts for or collects a contingency fee and a referring attorney may be made only if the attorneys are in the same firm or: (1) the division is proportional to the services performed by each attorney; (2) the claimant is advised in writing of and does not object to the participation of the referring attorney; (3) the total undivided fee is within the limits established by the bill; and (4) the claimant's attorney files specified documents as a public record with the Director of the Health Claims Alternative Dispute Office.

An attorney who violates the bill is subject to disbarment, suspension, or other disciplinary actions under the Maryland Rules.

**Current Law:** Under the Maryland Rules, an attorney's fee must be reasonable. The factors to be considered in determining the reasonableness of a fee include: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly; (2) the likelihood that the acceptance of particular employment will preclude other employment by the lawyer; (3) customary fees charged in the locality for similar services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer performing the services; and (8) whether the fee is fixed or contingent.

A fee may be contingent on the outcome of the matter for which the service is rendered, except where prohibited. Contingency fee prohibitions include: (1) fees charged in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or custody of a child, or upon the amount of alimony or support or property settlement, or property award resulting from divorce; or (2) representing a defendant in a criminal matter.

A division of fees between attorneys who are not in the same firm may be made only if: (1) the division is proportional to the services performed by each attorney or, by written agreement with the client, each attorney assumes joint responsibility for the representation; (2) the client is advised of and does not object to the participation of all attorneys involved; and (3) the total fee is reasonable.

## Additional Information

**Prior Introductions:** A similar bill, HB 1108 of 2004, received an unfavorable report from the Judiciary Committee.

**Cross File:** None.

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

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

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