

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1098

(Delegate Mandel, *et al.*)

Environmental Matters

Vehicle Laws - Medical Advisory Board - Safe Operation of Motor Vehicles

This bill requires the Motor Vehicle Administration (MVA) to appoint a Medical Advisory Board (MAB) of qualified physicians and optometrists to advise on the ability of a driver to safely operate a vehicle, expands the individuals who are authorized to file a report on an individual with MAB, and extends immunity for certain medical professionals who provide patient information to MAB.

Fiscal Summary

State Effect: None. Any change in State activities would not materially affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A written report raising questions as to an individual's ability to drive may be filed with the MVA by:

- a law enforcement official;
- a physician;
- a registered nurse;
- a physical or occupational therapist;

- a psychologist;
- an optometrist;
- a social worker;
- a chiropractor;
- an emergency medical technician;
- a professional counselor; or
- any other person authorized to diagnose, monitor, or treat disorders or conditions that potentially impair safe driving.

The scope of MAB's authority is expanded to include dangerous medical "conditions" and any disorder or condition that could impair an individual's ability to operate a motor vehicle safely; such conditions must be defined by the Department of Health and Mental Hygiene, the Medical and Chirurgical Facility, and the State Board of Examiners in Optometry.

Psychologist privilege, psychiatric privilege, professional counselor privilege, or social worker privilege does not preclude any person from making a report; it is unclear whether other privileges apply. The bill also repeals a provision of State transportation law that prohibits a report from being made from information derived from the diagnosis or treatment of a person on whom a confidential or privileged relationship is conferred by law, unless authorized in writing by that person.

Any person acting in good faith who submits a report to MAB is immune from any civil or criminal liability arising from the making of the report. A MAB member is immune from any civil or criminal liability from any opinions or decisions made in good faith as a member of the board.

Any person who violates specified reporting or confidentiality provisions for reports to MAB is subject to the liability and penalties specified in State law.

Current Law: An applicant for a driver's license must affirm that he or she is medically fit to drive. The administrator of the MVA may appoint a MAB of qualified physicians and optometrists to advise the MVA on the fitness of an individual to operate a motor vehicle. The administrator may refer to MAB, for an advisory opinion, the case of any licensee or license applicant with an existing or suspected mental or physical disability if the administrator has good cause to believe that it would be contrary to public safety and welfare if that individual operates a vehicle.

State law authorizes physicians or practitioners to report loss of consciousness or visual acuity disorders to MAB. The reporting requirement specifies disorders and does not mention conditions. Such a report may not be made from information derived from the diagnosis or treatment of any individual with whom the person filing the report has a confidential or privileged relationship by law. This provision does not apply if the individual has authorized the report in writing.

Reports are confidential, may only be disclosed on court order, and may only be used to determine the qualifications of an individual to drive.

If a person, including an officer or employee of a governmental agency, discloses an individual's personal records in violation of State law, he or she is liable to the individual for actual damages that the court considers appropriate. The court may also assess counsel fees and other litigation costs against the defendant if it determines that the complainant has substantially prevailed. A health care provider who discloses a patient's record is guilty of a misdemeanor and subject to a fine of up to \$1,000 for the first offense and up to \$5,000 for each subsequent conviction. A person who fraudulently obtains medical records and wrongfully discloses them is guilty of a misdemeanor and subject to fines ranging from \$50,000 to \$250,000 and imprisonment ranging from 1 to 10 years.

Additionally, the federal Health Insurance Portability and Accountability Act of 1996 Privacy Rule provides that a covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information authorizes in writing. A covered entity is a: (1) health plan; (2) health care clearinghouse; or (3) health care provider who transmits health care information in electronic form. The U.S. Department of Health and Human Services may impose civil fines on covered entities that do not comply with the Privacy Rule. Penalties are \$100 per incident of noncompliance and cannot exceed \$25,000 in one year.

Background: The Maryland MAB has been in operation since 1947. It is one of the oldest in the country. It is composed of 16 members, currently all physicians. Physicians on the board include surgeons, ophthalmologists, general practitioners, neurologists, psychiatrists, and internists. One board member is a full-time employee, while others are paid by the hour on a contractual basis.

MAB handles approximately 12,000 cases per year. Approximately 401 cases result in an emergency suspension (*i.e.*, the privilege to drive is taken away immediately and the licensee can appeal in seven days), while 780 result in a formal suspension (the privilege is held in abeyance until a formal hearing is held).

State Fiscal Effect: Though altering the types of people who are authorized to report cases to the MVA may result in more referrals to MAB, the number of additional cases would likely be minimal, as many of these individuals are already covered under existing statute as individuals who can diagnose and treat certain disorders, and law enforcement officials already refer cases to MAB. Any increased classification of conditions that could impact the ability to drive could be handled with existing resources.

Additional Information

Prior Introductions: A similar bill, HB 1195, was introduced in the 2004 session but received an unfavorable report from the Environmental Matters Committee.

Cross File: None.

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

Fiscal Note History: First Reader - March 7, 2005

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