

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1059
Judiciary

(Delegate Shank, *et al.*)

Health Care Malpractice - Emergency Medical Care - Standard of Proof for
Liability

This bill provides that a health care provider is not civilly liable for any act or omission in providing assistance or medical aid to a patient in a medical facility if: (1) the factual findings regarding the act or omission are not supported by clear and convincing evidence; (2) the act or omission is not one of gross negligence; (3) the treatment is given 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 health care provider is acting in full compliance with the federal Emergency Medical Treatment and Active Labor Act (EMTALA) and the regulations adopted under that Act.

The bill takes effect June 1, 2006 and does not apply to any cause of action arising before that date.

Fiscal Summary

State Effect: The bill would not materially affect the overall caseload of the Judiciary.

Local Effect: See above.

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: Similar bills, HB 113 and HB 1230 of 2005, were heard in the House Judiciary Committee, but no further action was taken on either bill.

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, 2006
nas/jr

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