

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 48
 Judiciary

(Delegate Morhaim, *et al.*)

Circuit Courts - Medical Injury - Medical Malpractice Administrative Review Board

This bill requires a health care malpractice action filed in court to be referred to a medical malpractice review board before being heard in court.

The bill takes effect June 1, 2007 and does not apply to an action filed before that date.

Fiscal Summary

State Effect: General fund expenditures could increase by \$1.9 million in FY 2008 to cover the cost of implementing the review boards. Out-years reflect annualization and inflation. Revenues would not be affected.

(\$ in millions)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1.9	2.0	2.1	2.2	2.2
Net Effect	(\$1.9)	(\$2.0)	(\$2.1)	(\$2.2)	(\$2.2)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Within 15 days after all parties have filed a supplemental certificate of a qualified expert with the court, a health care malpractice action filed in a court must be

submitted to a medical malpractice review board for its review and decision. A circuit court or the U.S. District Court must refer the action to a circuit's administrative judge, who in turn must appoint a circuit court judge or a retired judge to chair the board. The administrative judge, in appointing the chair, must consider specified information about that individual. The administrative judge must establish specifications for ongoing training, and each appointee must have a consistent record of participating in specified continuing education programs.

The administrative judge must send notice to the plaintiff and the defendants of the procedures for the review panel and the name of the board's chair. All time limits applicable to a health care malpractice claim are suspended from the date the complaint is referred to the administrative judge until 30 days following the day the parties and the court receive the board's decision.

Within 20 days after the referral to the administrative judge, the board chair must choose five individuals from the health care providers list maintained by the Health Care Alternative Dispute Resolution Office and send the list to the parties. The bill specifies criteria that the board chair must follow when selecting the health care providers. Each party may strike one name from the list. If there are multiple plaintiffs or defendants, the plaintiffs or defendants must use each side's strike jointly. The board chair must appoint the membership of the board after receiving the strikes from the plaintiff and the defendant.

Within 15 days after the board's appointment, the chair must notify the parties and convene the board in an initial conference. At that conference, the chair must establish a schedule for filing records and discovery, which must be filed at least 30 days before the hearing date. A hearing must be held no later than 60 days from the date of the initial conference.

The bill establishes procedures for conducting board meetings and hearings and prohibits the chair from voting in its deliberations. The board must determine whether the evidence is sufficient to raise a legitimate question, to a reasonable medical or professional probability, that: (1) the defendant's actions or omissions were a departure from the appropriate standard of care; and (2) the defendant's actions or omissions proximately caused the plaintiff's alleged injury. The board must issue its decision within 30 days after the hearing.

Within 30 days after the decision is issued, it must be served to Maryland Health Care Commission and the Maryland Patient Safety Center to use for patient safety enhancements. The Maryland Health Care Commission must make the decision accessible to the public consistent with applicable State and federal law.

Except for the chair, each member of the board is entitled to be reimbursed up to \$350 for work performed as a member of the board and reasonable travel expenses. The chair must keep a record of the members' time and expenses and must submit the record to the parties for payment with the board's decision. Unless otherwise agreed by the parties, the costs of the hearing and reasonable expenses of review must be divided equally between the parties.

A party may reject the board's decision for any reason. The rejecting party must file a notice of rejection with the chair and the appropriate court, and must serve the notice on the other party within 30 days after receiving the decision. Upon receiving the notice of rejection, the court must reinstate the complaint to the active trial list and lift the suspension of the time limits. If both parties accept the decision, both parties must move to dismiss the complaint filed in court within 30 days after receiving the decision.

The board's decision is admissible as evidence in a subsequent trial and its unanimous decision on a question must be accorded a presumption of correctness in a trial of the case. In a subsequent trial, either party may call a member of the board as a witness, and a court must retain a neutral expert witness to testify on issues of liability of damages.

A party that loses before the board and in a subsequent trial is responsible for costs in accordance with the Maryland Rules and the reasonable attorney's fees of the prevailing party. A party that prevails before a board but loses in a subsequent trial is responsible for costs in accordance with the Maryland Rules.

A board member is immune from suit for any act or decision made during the member's tenure and during the scope of the designated authority.

Current Law: All claims for personal injury or wrongful death against a health care provider must first be filed with the Health Claims Alternative Dispute Resolution Office. Under these provisions, a health care malpractice claim is referred to an arbitration panel for resolution. However, either party may waive the arbitration, and the case may then be brought in circuit court.

For health care malpractice claims filed in court, within 30 days after the later of the filing of the defendant's answer to the complaint or the defendant's certificate of a qualified expert, the court must order the parties to engage in "alternative dispute resolution" (mediation, neutral case evaluation, neutral fact finding, or a settlement conference) at the earliest possible date. Alternative dispute resolution is not required if the court finds that it would not be productive and all parties agree not to use it. The law specifies mediation procedures and establishes requirements for individuals who serve as

mediators. Mediators are immune from suit for any act or decision made during mediation and within the scope of authority.

State Expenditures: General fund expenditures could increase by an estimated \$1,919,678 in fiscal 2008, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring 15 half-time and 13 full-time clerical assistants to perform administrative functions for the panels and the per diem cost for retired judges in each jurisdiction. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the per diem payment for a retired circuit court judge is \$522;
- in Baltimore City, Baltimore County, Montgomery County, and Prince George's County, the average number of days for which the per diem would be paid is 200 annually; and
- in the remaining 20 jurisdictions, the average number of days for which the per diem would be paid is 75 annually.

Salaries and Fringe Benefits	\$653,499
Per Diem Payments to Retired Judges	996,498
Other Start-up and Operating Expenses	<u>269,681</u>
Total FY 2007 State Expenditures	\$1,919,678
Positions	28.0

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: An identical bill, HB 816 of 2006, received an unfavorable report from the House Judiciary Committee. A similar bill, HB 823 of 2005, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

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

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nas/jr

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