

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 155
Economic Matters

(Delegate Kach, *et al.*)

Education, Health, and Environmental Affairs

Physicians - Licensure - Liability Coverage

This bill requires physicians licensed in the State who perform outpatient surgical services in freestanding ambulatory care facilities to maintain medical liability insurance of \$500,000 per occurrence or claim and \$1,500,000 per annual aggregate, or show coverage under the Federal Tort Claims Act or the Maryland Tort Claims Act (MTCA).

Fiscal Summary

State Effect: The Department of Health and Mental Hygiene (DHMH) advises that it can handle enforcement with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Physicians have to provide the Board of Physicians with proof of insurance when applying for a license, renewal, reinstatement, and upon board request. If the physician does not provide the required proof of insurance, the board, after providing notice to the licensee, may subject the licensee to disciplinary action by the board. In addition, if a physician's insurance is cancelled, he or she must notify the board at least 10 business days before the effective date of the cancellation.

A "surgical service" means any invasive procedure, whether therapeutic or diagnostic, involving the use of microscopic, endoscopic, arthroscopic, or laparoscopic equipment; or a laser for the removal or repair of an organ or other tissue. A "surgical service" does

not include outpatient services that (1) are limited to the skin and mucous membranes; (2) do not extend deeper than the skin and mucous membranes; and (3) are performed with local or topical anesthesia.

The bill does not apply to, or prevent the rendering of, emergency medical services by a licensed physician in accordance with the law.

The board may enforce the bill by randomly auditing a portion of the licensees subject to it. An applicant for initial licensure, renewal, or reinstatement who falsifies his or her insurance coverage as required under the bill is also subject to disciplinary action by the board.

Current Law/Background: Health care practitioners working in freestanding ambulatory care facilities must be licensed or certified by the appropriate occupational licensing board. DHMH licenses freestanding ambulatory care facilities. A freestanding ambulatory care facility includes an ambulatory surgical facility, a freestanding endoscopy facility, a freestanding facility utilizing major medical equipment, a kidney dialysis center, or a freestanding birthing center.

Under the Maryland Tort Claims Act, State personnel are immune from liability for acts or omissions performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Furthermore, under MTCA the State essentially waives its own common law immunity. However, MTCA limits State liability to \$200,000 to a single claimant for injuries arising from a single incident. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is liable.

The Federally Supported Health Centers Assistance Act of 1992 and 1995 granted medical malpractice liability protection through the Federal Tort Claims Act to Health Resources and Services Administration-supported health centers. Under the Act, health centers are considered federal employees and are immune from lawsuits, with the federal government acting as their primary insurer.

In 2004 and 2005, the General Assembly adopted legislation in response to increasing concern that medical malpractice insurance had become unaffordable for individuals practicing in certain high-risk specialties such as emergency surgery, obstetrics, neurosurgery, and orthopedic surgery. One provision of the legislation placed a four-year moratorium on the annual increase of \$15,000 in the cap on noneconomic damages for medical malpractice awards.

In health care malpractice actions, noneconomic damages include payment for pain, suffering, and disfigurement, while economic damages include payment for loss of

earnings and medical expenses. Studies by the U.S. Government Accountability Office have indicated that recent sharp increases in medical malpractice insurance rates are due in part to insurer losses on medical malpractice claims. Other contributing factors include decreased investment income, artificially low premium rates adopted while insurers competed for market share during boom years, and higher overall costs due largely to increased reinsurance rates for medical malpractice insurers.

At least six states (Colorado, Connecticut, Kansas, Massachusetts, New Jersey, and Wisconsin) require physicians to carry minimum levels of professional liability insurance. In addition, at least five states require physicians to carry minimum levels of coverage to qualify for state liability reforms, including caps on damages. The American Medical Association advises that, while many states do not require liability insurance coverage, physicians must have minimum levels of coverage to obtain hospital staff privileges and participate in health plans.

In Maryland, doctors who carry liability insurance typically carry limits of \$1 million per occurrence and \$3 million per annual aggregate. Policies generally have to be renewed on an annual basis. The Maryland Insurance Administration advises that medical liability insurance was more affordable in 2008 than it was in 2004.

The board is authorized to establish fees that approximate the cost of maintaining its operations.

The Board of Physicians regulates about 23,000 physicians. However, it does not know how many of the 23,000 work in freestanding ambulatory care facilities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Insurance Administration, American Medical Association, Medical Mutual Liability Insurance Society of Maryland, Department of Legislative Services

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