

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 671
Judiciary

(Delegate Beitzel)

State Government - Maryland Tort Claims Act - Garrett County Physicians

This bill includes licensed physicians practicing primarily in Garrett County in the definition of “State personnel” under the Maryland Tort Claims Act (MTCA) if (1) the Secretary of Health and Mental Hygiene determines that Garrett County is a medically underserved area; and (2) the physician provides prenatal or obstetrical services to an individual who is a State resident and a Maryland Medical Assistance Program (Medicaid) recipient.

The bill takes effect on October 1, 2010, and terminates on September 30, 2015.

Fiscal Summary

State Effect: None. The bill is not expected to change budgeted funds for tort claims paid under the Maryland Tort Claims Act. However, while a State funded maternity clinic has not been established in Garrett County, the bill may result in general fund expenditure savings in future fiscal years should it negate the need for such a facility. It is anticipated that the State Treasurer will be able to handle any administrative changes occurring as a result of the bill with existing resources.

Local Effect: None. The bill does not materially affect Garrett County finances.

Small Business Effect: Potential minimal impact on physicians who limit their liability as a result of the bill and law firms who receive lower litigation fees and damage awards for representing plaintiffs and defendants in tort actions involving physicians covered by the bill.

Analysis

Current Law: Under the Maryland Tort Claims Act (MTCA), 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. 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. MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. 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 not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

As previously stated, if an individual is eligible for coverage under MTCA, the State's tort liability is capped at \$200,000. However, for causes of action arising during calendar 2010 that are not covered by MTCA, State law limits noneconomic damages to \$680,000 for health care malpractice claims and \$850,000 for claims of wrongful death that meet certain criteria. These limits increase annually as specified in statute.

Background: According to the U.S. Department of Health and Human Services, Medically Underserved Areas/Populations (MUA/Ps) are areas or populations designated by the Health Resources and Services Administration as having too few primary care providers, high infant mortality, high poverty, and/or a high elderly population. Garrett County has been designated as a MUA by the State and federal government.

The Garrett County Health Department (GCHD) advises that there are no obstetrics or gynecological specialists (OB/GYNs) practicing in the county. Currently, the county has four family practice physicians who have staff privileges at Garrett County Memorial Hospital and have agreed to see OB/GYN patients. OB/GYN physicians typically pay significantly higher medical malpractice insurance rates than family practice physicians. Since these family practice physicians agreed to see OB/GYN patients in a medically underserved area, these doctors have been receiving State subsidies to offset some of the difference between their OB/GYN and non-OB/GYN premiums. According to the *2009 Joint Chairmen's Report*, the subsidy covered 70% of the difference. No subsidy has been available since January 1, 2010. The physicians have been offered a special alternative rate, so long as each physician makes no more than 30 deliveries per year. During the years 2006-2008, an average of 273 babies were delivered by these physicians each year, and approximately 59% of the deliveries were to women who had Medicaid as their primary or secondary insurance coverage. GCHD has expressed concern over the continuation of services for pregnant women on Medicaid, since the alternative rate

allows for no more than 120 deliveries per year and the elimination of Medicaid patients would allow the physicians to fall within the delivery limit.

The Department of Health and Mental Hygiene (DHMH) is currently exploring options to ensure that Medicaid patients continue to receive services in the event that the physicians decide to limit their practice to non-Medicaid clientele. Among the options being explored is the establishment of a State-funded maternity clinic for Medicaid recipients. GCHD has agreed to this arrangement. On September 14, 2009, DHMH granted GCHD authority to contract with insurance providers for GCHD obstetrics services. Thus far, a clinic has not been established.

Another option being discussed is an arrangement for obstetrics services with Mountain Laurel Medical Center, the federally qualified health center in Garrett County. Under this arrangement, the four physicians would continue to provide OB/GYN services under federal tort protection. However, this arrangement requires federal approval of a scope of service change, which will take some time.

In fiscal 2009, the State Insurance Trust Fund (SITF) paid \$3.5 million for tort claims under MTCA. The proposed fiscal 2011 budget includes a \$7.0 million appropriation for tort claims (including motor vehicle torts) under MTCA. The funds are to be transferred to SITF. However, the Budget Reconciliation and Financing Act of 2010 authorizes the Governor to transfer approximately \$5.2 million from SITF to the general fund.

State Expenditures: SITF is administered by the Treasurer's Office. The Treasurer's Office advises that it has no history of adjusting, settling, or trying claims for prenatal or obstetrical malpractice and thus, cannot reliably estimate any additional administrative costs as a result of this bill. However, the Department of Legislative Services anticipates that any increase in administrative costs for the Treasurer's Office will be minimal and can be handled with existing resources.

Agencies pay premiums to SITF that are comprised of an assessment for each employee covered and SITF payments for torts committed by the agency's employees. The portion of the assessment attributable to losses is allocated over five years. Since the Garrett County physicians would be classified as DHMH employees under this bill, general fund expenditures for DHMH may increase in future years if SITF incurs losses as a result of medical malpractice claims against the physicians.

Additional Information

Prior Introductions: None.

Cross File: SB 553 (Senator Edwards) - Judicial Proceedings.

Information Source(s): U.S. Department of Health and Human Services, Department of Health and Mental Hygiene, Garrett County, Department of Legislative Services

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