

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Revised

Senate Bill 402

(Senator Klausmeier, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Physicians - Professional Liability Insurance Coverage - Notification and Posting Requirements

This bill requires a licensed physician in the State to notify a patient in writing if the licensee does not carry professional liability insurance coverage or if the physician receives notification from his or her insurance provider that coverage has lapsed or has not been renewed. The bill requires the notification to be signed by the patient at the patient's first visit if the physician does not carry professional liability insurance coverage, or at the patient's first visit following the licensee's receipt of notification of the lapse or nonrenewal of the licensee's coverage. The signed notification must be kept in the patient's records. The Board of Physicians must devise language regarding the notification requirements. In addition, the bill requires licensed physicians who do not carry medical liability insurance to conspicuously post such information where they practice.

Fiscal Summary

State Effect: None. The bill's requirements do not affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: 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.

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.

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 addition, at least five states (Alaska, Florida, Montana, Ohio, and Oregon) require physicians or similar providers to notify a patient if they do not have medical liability insurance.

Additional Information

Prior Introductions: SB 882 of 2009 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 1157, was withdrawn.

Cross File: None.

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

Fiscal Note History: First Reader - February 16, 2010
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Analysis by: Erin McMullen

Direct Inquiries to:
(410) 946-5510
(301) 970-5510