

HOUSE BILL 924

P1, J1, J2

1lr1413

By: **Delegate Mizeur**

Introduced and read first time: February 11, 2011

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commission on State-Administered Medical Malpractice Liability Insurance**

3 FOR the purpose of establishing the Commission on State-Administered Medical
4 Malpractice Liability Insurance; providing for the composition, chair
5 designation, and staffing of the Commission; prohibiting a member of the
6 Commission from receiving compensation; providing that a member of the
7 Commission may receive reimbursement for certain expenses; requiring the
8 Commission to examine the federal model for insuring certain physicians under
9 the Federal Tort Claims Act and to consider certain measures to provide
10 affordable insurance to certain physicians in the State under the Maryland Tort
11 Claims Act; requiring the Commission to make certain recommendations;
12 requiring the Commission to report certain findings and recommendations to
13 the General Assembly on or before a certain date; providing for the termination
14 of this Act; and generally relating to the Commission on State-Administered
15 Medical Malpractice Liability Insurance.

16 Preamble

17 WHEREAS, Medical malpractice insurance costs continue to create a barrier for
18 health providers seeking to practice in this State; and

19 WHEREAS, Passage of the Patient Protection and Affordable Care Act will
20 expand health coverage access to an estimated 32 million new patients; and

21 WHEREAS, While more Marylanders will have health insurance when federal
22 reform is fully implemented, their coverage will be meaningful only if they have access
23 to health care providers able to meet their needs; and

24 WHEREAS, The overall population is aging and as a result requires more health
25 services at the same time that health care professionals are aging and retiring from
26 the work force; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, The Journal of the American Medical Association, the American
2 Academy of Family Physicians, and other health experts report that only 2% to 10% of
3 graduating medical students choose to become primary care physicians; and

4 WHEREAS, Recently released projections of physician supply and demand
5 identify a national shortage of 90,000 physicians in 10 years; and

6 WHEREAS, Between 2000 and 2020, projected demand for nurses will increase
7 by 40% while supply is projected to grow at only 6%, and unless we increase the
8 number of nurses being educated in Maryland, we will be short 10,000 nurses by 2016;
9 and

10 WHEREAS, Health provider shortages disproportionately affect the State's rural
11 regions, with the Eastern Shore, Western Maryland, and Southern Maryland all
12 suffering shortages above 60% based on physician accessibility categories; and

13 WHEREAS, Primary-care providers who practice at federally qualified health
14 centers (FQHCs) do not purchase private medical malpractice insurance because they
15 have liability coverage under the Federal Tort Claims Act (FTCA); and

16 WHEREAS, When a successful malpractice case is brought against a provider at
17 a FQHC, the federal government becomes the insurer and agrees to pay any claim;
18 and

19 WHEREAS, The federal Health Resources and Services Administration estimates
20 that FQHC providers saved more than \$203 million on the cost of purchasing private
21 insurance in 2008 alone; and

22 WHEREAS, The FTCA coverage for FQHC providers has proven to weed out
23 frivolous claims, with more than half of all health center claims settled without going
24 to court, and from 1993 to 2009, only \$298 million in resolved claims were paid under
25 FTCA coverage for qualifying health centers – a figure substantially smaller than the
26 amount paid by other comparable private sector provider categories over a similar
27 time period; and

28 WHEREAS, Section 10607 of the Patient Protection and Affordable Care Act
29 authorizes \$50 million for a 5-year period beginning in Fiscal Year 2011 for
30 demonstration grants to states that develop, implement, and evaluate alternatives to
31 the current tort litigation system for resolving disputes over injuries caused by a
32 health care provider; now, therefore,

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
34 MARYLAND, That:

35 (a) There is a Commission on State-Administered Medical Malpractice
36 Liability Insurance.

1 (b) The Commission consists of the following members:

2 (1) three members of the Senate of Maryland, appointed by the
3 President of the Senate;

4 (2) three members of the House of Delegates, appointed by the
5 Speaker of the House;

6 (3) the Attorney General, or the Attorney General's designee;

7 (4) the Secretary of Health and Mental Hygiene, or the Secretary's
8 designee;

9 (5) the Chair of the Maryland Health Care Commission, or the Chair's
10 designee;

11 (6) the Chair of the Maryland Community Health Resources
12 Commission, or the Chair's designee;

13 (7) the Executive Director of the Maryland Board of Nursing, or the
14 Executive Director's designee;

15 (8) the Chair of the Maryland Board of Physicians, or the Chair's
16 designee;

17 (9) two representatives of the Medical and Chirurgical Faculty of
18 Maryland, including one primary care physician and one obstetrician;

19 (10) a representative of the Maryland Nurses Association;

20 (11) a representative of the Maryland Hospital Association;

21 (12) a representative of the Maryland Association for Justice;

22 (13) a representative of the Medical Mutual Liability Insurance Society
23 of Maryland;

24 (14) an expert on Federal Tort Claims Act coverage for physicians at
25 federally qualified health centers; and

26 (15) a physician working at a federally qualified health center in
27 Maryland and covered under the Federal Tort Claims Act.

28 (c) (1) The Commission shall hold an organizational meeting promptly
29 after the appointment of its members.

30 (2) At the organizational meeting required under paragraph (1) of this
31 subsection, the members of the Commission shall designate a chair of the Commission.

1 (d) The Department of Legislative Services shall provide staff for the
2 Commission.

3 (e) A member of the Commission:

4 (1) may not receive compensation as a member of the Commission; but

5 (2) is entitled to reimbursement for expenses under the Standard
6 State Travel Regulations, as provided in the State budget.

7 (f) (1) The Commission shall examine the innovative and cost-effective
8 federal model for insuring physicians under the Federal Tort Claims Act and shall
9 consider and recommend workable measures to provide affordable insurance to
10 physicians who practice medicine in the State under the Maryland Tort Claims Act.

11 (2) In working to design an effective State-administered medical
12 malpractice insurance program, the Commission shall also consider ways to
13 incentivize beneficial physician practices through this program, such as delivery of
14 error-free medical care, use of electronic medical records, treatment of patients in
15 designated underserved areas, and treatment of all patient types, including patients
16 covered through Medicare, Medicaid, and the Maryland Children's Health Program.

17 (3) In designing the proposed State-administered medical malpractice
18 insurance program, the Commission shall study and make recommendations
19 including, but not limited to:

20 (i) establishing eligibility for participation in the new program,
21 such as including providers that practice in certain areas of medicine, treat certain
22 patients, adopt certain practice patterns, practice in certain geographic regions, or
23 have a zero-error claim history;

24 (ii) providing actuarial estimates, with multiple
25 program-eligibility models, on how much money would be required in a reserve fund
26 to pay claims;

27 (iii) determining a provider fee scale for participation in the
28 program and considering whether the program should be designed to generate revenue
29 to cover costs, realize a profit, or require other sources of funding;

30 (iv) determining how the Maryland Tort Claims Act may be
31 modified to ensure that the program both lowers malpractice insurance costs for
32 providers and provides appropriate compensation to patients or their families that
33 sustain loss from medical error;

1 (v) ascertaining the potential staffing needs of the Office of the
2 Attorney General to defend program-participating physicians that may utilize the
3 Office's services when sued;

4 (vi) determining whether the State should establish a secondary
5 or supplemental reinsurance system for certain eligible providers;

6 (vii) determining whether the program should include rules
7 governing entry into and expulsion from the program based on a provider's claim
8 history; and

9 (viii) determining whether special medical courts should be used
10 to adjudicate claims as a complement or alternative to the existing State health care
11 malpractice arbitration panel and circuit court structure.

12 (4) The Commission shall make recommendations for improving
13 Maryland's medical malpractice insurance system to best position the State to compete
14 for federal demonstration grant funding available under Section 10607 of the Patient
15 Protection and Affordable Care Act.

16 (g) On or before December 15, 2011, the Commission shall report its findings
17 and recommendations to the General Assembly in accordance with § 2-1246 of the
18 State Government Article.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 June 1, 2011. It shall remain effective for a period of one year and, at the end of May
21 30, 2012, with no further action required by the General Assembly, this Act shall be
22 abrogated and of no further force and effect.