HB 924

Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 924 (Delegate Mizeur)
Economic Matters and Health and Government Operations

Commission on State-Administered Medical Malpractice Liability Insurance

This bill establishes a Commission on State-Administered Medical Malpractice Liability Insurance to examine the federal model for insuring physicians under the Federal Tort Claims Act and consider and recommend measures to provide affordable insurance to physicians who practice medicine in the State under the Maryland Tort Claims Act (MTCA). The Department of Legislative Services must staff the commission. The commission has to report its findings and recommendations to the General Assembly by December 15, 2011.

The bill takes effect June 1, 2011, and terminates May 30, 2012.

Fiscal Summary

State Effect: General fund expenditures increase by at least $100,000 in FY 2012 for consulting services necessary to accomplish the objectives of the commission and produce a report in six and a half months. In addition, resources may need to be redirected from other State agencies. Any expense reimbursements for task force members are assumed to be minimal and absorbable within existing budgeted resources.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	$0	$0	$0	$0	$0
GF Expenditure	0	100,000	0	0	0
Net Effect	$0	($100,000)	$0	$0	$0

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: In designing a State-administered medical malpractice insurance program, the commission must study and make recommendations related to:

- establishing eligibility in the new program;
- providing actuarial estimates on how much money would be required in a reserve fund to pay claims;
- determining a provider fee scale for participation in the program and considering sources of funding;
- determining how MTCA may be modified to ensure that the program both lowers insurance costs for providers and provides appropriate compensation to patients and their families;
- ascertaining potential staffing needs of the Office of the Attorney General to defend program-participating physicians;
- determining whether the State should establish a secondary or supplemental reinsurance system for certain eligible providers;
- determining whether the program should include rules governing entry into and expulsion from the program based on a provider's claim history; and
- determining whether special medical courts should be used to adjudicate claims.

The commission must also make recommendations for improving Maryland's medical malpractice insurance system to best position the State to compete for federal demonstration grant funding available under recent federal health care reform.

Commission members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Current Law/Background: President Obama's federal budget for fiscal 2012 calls for a more aggressive effort to reform the medical malpractice system in order to reduce defensive medicine, promote patient safety, and improve patient outcomes. Specifically, the President's budget calls for $250 million in U.S. Justice Department grants to help states rewrite their malpractice laws in accordance with certain recommendations, including the use of health courts.

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.

Under 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.

Recently, the *2010 Report on the Availability and Affordability of Health Care Medical Professional Liability Insurance in Maryland* issued by the Maryland Insurance Administration in September 2010 stated that medical professional liability insurance remains available in Maryland and has become more affordable in the last few years.

State Fiscal Effect: The Department of Legislative Services advises that, given the December 2011 reporting deadline and the extensiveness of the commission's charge, the department will likely have to hire a consultant to staff the commission and an actuary for the required estimates, in addition to relying heavily on the resources of other State agencies. Accordingly, general fund expenditures increase by at least $100,000 in fiscal 2012 to reflect the cost of consulting services.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): *2010 Report on the Availability and Affordability of Health Care Medical Professional Liability Insurance in Maryland*, Maryland Insurance Administration; Department of Legislative Services

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mc/ljm

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