

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 5

(Senator Klausmeier, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Physicians - Medical Professional Liability Insurance Coverage - Notification and Posting Requirements

This bill requires each licensed physician in the State to notify, in writing, a patient who visits the physician's regular place of business if the physician does not have medical professional liability insurance coverage or if the physician receives notification from his or her insurance carrier or provider that coverage has lapsed or has not been renewed.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: "Medical professional liability insurance coverage" includes coverage written as an individual policy; under a group policy or self-insurance program by a hospital or other health care facility; and protection provided under local government insurance programs, the federal Tort Claims Act, or the Maryland Tort Claims Act (MTCA).

The written notification required under the bill must be signed by the patient at the patient's first visit to the physician's regular place of business if the physician does not carry medical professional liability insurance coverage, or at the patient's first visit to the physician's regular place of business following the physician's receipt of notification of

the lapse or nonrenewal of the licensee's coverage. The signed notification must be kept in the patient's medical records. The Board of Physicians must devise language regarding the notification requirements. In addition, a licensed physician who does not have medical professional liability insurance coverage must conspicuously post such information in the physician's regular place of business.

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.

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.

According to the Maryland Hospital Association, a physician must maintain medical professional liability insurance coverage, either individual coverage or coverage by the hospital, in order to obtain privileges to practice at a hospital.

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 402 of 2010 passed in the Senate but received an unfavorable report from the House Health and Government Operations Committee. 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, Maryland Hospital Association, American Medical Association, Department of Legislative Services

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Analysis by: Jennifer B. Chasse

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