

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**

Senate Bill 895

(Senator Madaleno)

Finance

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**Medical Professional Liability Insurance for Nonprofit Health Care Providers**

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This bill requires a county to provide, to a nonprofit health care provider within its jurisdiction, medical professional liability insurance that offers coverage in the amount of \$200,000 per occurrence or claim and \$500,000 for total claims arising from the same occurrence. Under the bill, “nonprofit health care provider” means an organization, institution, association, society, or corporation (but not a hospital) that (1) provides health care services; (2) is tax-exempt under § 501(c)(3) of the Internal Revenue Code; (3) is not covered by the Federal Tort Claims Act; and (4) has been approved by the county.

The bill does not limit the liability of a nonprofit health care provider to any amount of coverage.

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**Fiscal Summary**

**State Effect:** The bill only affects local government operations and is not expected to materially affect State finances.

**Local Effect:** Local expenditures increase beginning in FY 2012 for each county to provide professional liability insurance to nonprofit health care providers within its jurisdiction. A reliable estimate of expenditures cannot be made at this time, as discussed below. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Minimal.

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## Analysis

**Current Law:** The Maryland Associations, Organizations, and Agents Act limits the liability of nonprofit organizations that carry insurance meeting specified minimums. It provides that agents (directors, officers, trustees, employees, and volunteers) of those nonprofit organizations may not be held personally liable as long as the acts are made without malice or gross negligence. Liability is limited to the applicable limit of insurance coverage for acts or omissions made in the course of duties by the nonprofit entity or its agents. However, limits on liability do not apply in any health care malpractice action.

The Local Government Tort Claims Act (LGTCa) limits the liability of a local government to \$200,000 per individual claim and \$500,000 for total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTCa prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees. LGTCa defines local government to include counties, municipal corporations, Baltimore City, and various agencies and authorities of local governments such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities.

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.

For causes of action arising during calendar 2011 that are not covered by MTCA, State law limits noneconomic damages to \$695,000 for health care malpractice claims. This limit increases annually as specified in statute.

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.

**Local Expenditures:** Local expenditures increase beginning in fiscal 2012 for each county to provide professional liability insurance to nonprofit health care providers within its jurisdiction. Exact costs would depend on the number and type of providers (and covered employees) within each jurisdiction. Thus, a reliable estimate of expenditures cannot be made at this time.

Montgomery County – which currently provides insurance to certain volunteer physicians that perform services under the county’s direction – has raised concerns as to its ability to mitigate its potential liability with regard to providing insurance coverage to providers that are unaffiliated with any county program.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Carroll, Harford, and Montgomery counties; Office of the Attorney General; Maryland Health Claims Alternative Dispute Resolution Office; Department of Health and Mental Hygiene; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland State Treasurer's Office; Department of Legislative Services

**Fiscal Note History:** First Reader - March 21, 2011  
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