

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 857 (Senator Raskin)
Judicial Proceedings

Health Care Malpractice Claims - Expert Witnesses - Admissibility of Insurance Coverage

This bill specifies that the existence of professional liability insurance coverage is admissible at the hearing of a claim, or the trial of an action, against a health care provider for alleged medical injury if (1) an expert witness offers opinion testimony before a finder of fact; (2) the professional liability insurance carrier for the expert witness is a mutual company or a self-insured entity; and (3) a judgment against any defendant in the action as to whom liability is an issue in dispute would be paid by the carrier for the expert witness. The bill further specifies, however, that the evidence is admissible under the bill solely for the purpose of assessing the bias, if any, of the expert witness in providing the opinion testimony.

Fiscal Summary

State Effect: The change is procedural in nature and does not directly affect State finances.

Local Effect: The change is procedural in nature and does not directly affect local government finances.

Small Business Effect: None.

Analysis

Current Law: Maryland Rule 5-411 – which codifies Maryland’s common law and is derived from Rule 411 of the Federal Rules of Evidence – specifies that, in general, evidence of liability insurance or lack of insurance is inadmissible on the issue of whether

the person acted negligently or otherwise wrongfully. The fact of insurance or lack of insurance is believed to have little probative value on the issue of due care. (Irrelevant evidence is generally inadmissible.) More important, however, the rule of exclusion is intended to encourage the purchase of insurance as well as to guard against a jury decision based on funds available rather than on the facts as to fault.

Maryland Rule 5-411 also codifies Maryland's common law rule that evidence of insurance against liability may be admissible when offered for another purpose, such as proof of agency, ownership, control, or a witness's bias or prejudice. When the evidence is offered for (and is relevant to) such another purpose, the trial court must evaluate the probative value of the evidence with regard to the issue on which it is offered, the need for that evidence as to the issue, and the degree to which its admission is likely to result in unfair prejudice. If the likelihood of prejudice is substantial, the court may, in its discretion, exclude the evidence if there are other satisfactory ways in which the issue may be proved.

When evidence is admitted that is admissible as to one party or for one purpose but not admissible as to another party or for another purpose, the court, upon request, must restrict the evidence to its proper scope and instruct the jury accordingly.

Additional Information

Prior Introductions: None.

Cross File: HB 506 (Delegate Anderson) - Judiciary.

Information Source(s): Maryland Insurance Administration, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2012
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