

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 832

(Senator Kelley, *et al.*)

Finance

Economic Matters

Health Care Provider Malpractice Insurance - Scope of Coverage

This bill allows a medical malpractice insurance policy to include coverage for the defense of a health care provider in a disciplinary hearing arising out of the practice of the health care provider's profession – by repealing the provision prohibiting such coverage. The bill also makes a conforming change by repealing the provision that allows a *separate* insurance policy to be purchased to cover this kind of defense.

Fiscal Summary

State Effect: General fund revenues decrease minimally due to the 2% tax collected on premiums paid in the State, to the extent that authorizing a health care provider to purchase medical malpractice insurance and disciplinary defense insurance in one policy leads to smaller premiums for those health care providers. Expenditures are not affected.

Local Effect: None.

Small Business Effect: Minimal. The bill may reduce premium costs minimally for small business health care providers who may purchase medical malpractice insurance and disciplinary defense insurance under the same policy as a result of the bill.

Analysis

Current Law: The Insurance Article requires that each policy insuring a health care provider against damages due to medical injury arising from providing or failing to provide health care must contain provisions that are consistent with certain requirements in the Courts Article. Additionally, the policy must authorize the insurer, without

restriction, to negotiate and effect a compromise of claims within the limits of the insurer's liability, if the entire amount settled on is to be paid by the insurer.

A policy insuring a health care provider may not include coverage for the defense of a health care provider in a disciplinary hearing arising out of the practice of the health care provider's profession. However, such a policy may be offered and priced separately from a policy against damages from medical injury arising from providing or failing to provide adequate care.

Background: The National Association of Insurance Commissioners (NAIC) reports that medical professional liability insurance, commonly known as medical malpractice insurance, covers bodily injury or property damage as well as liability for personal injury such as mental anguish. NAIC further reports that the complexity involved in discovering negligence related to medical malpractice results in higher premiums paid by insureds and a higher percentage of premiums being used to pay for defense and cost containment expenses. Medical liability insurers spend considerable funds to investigate and defend claims where there is an adverse patient outcome not resulting from negligence.

In health care malpractice actions, there are two primary kinds of damages. Noneconomic damages include payment for pain, suffering, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury; economic damages, in contrast, include payment for loss of earnings and medical expenses and are not limited to a maximum amount. Studies by the U.S. Government Accountability Office indicated that sharp increases in medical malpractice insurance rates in the early 2000s were due, in part, to insurer losses on medical malpractice claims. Other contributing factors included 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.

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. Another provision decreased the percentage limitation in wrongful death cases from 150% to 125% and broadened the scope of the limitation.

Additional Information

Prior Introductions: None.

Cross File: HB 1363 (Delegate Mitchell, *et al.*) - Economic Matters.

Information Source(s): Maryland Health Claims Alternative Dispute Resolution Office, Department of Health and Mental Hygiene, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), National Association of Insurance Commissioners, Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2014
ncs/ljm

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