

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 441
Finance

(Senator Klausmeier)

**State Board of Physicians - Admissibility of Board Records - Workers'
Compensation Commission**

This bill makes the proceedings, records, files, and orders of the State Board of Physicians (MBP), its disciplinary panels, and any of its other investigatory bodies discoverable and admissible in evidence for (1) Workers' Compensation Commission (WCC) proceedings and (2) the appeals of WCC decisions to a circuit court.

Fiscal Summary

State Effect: WCC and MBP can handle the bill's requirements with existing budgeted resources. Expenditures for workers' compensation claims (all funds) may increase or decrease because the bill allows both claimants and employers to impeach the credibility of medical providers and experts, as discussed below. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures for workers' compensation claims may increase or decrease because the bill allows both claimants and employers to impeach the credibility of medical providers and experts, as discussed below. Revenues are not affected.

Local Effect: Local government expenditures for workers' compensation claims may increase or decrease because the bill allows both claimants and employers to impeach the credibility of medical providers and experts, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful. Small business expenditures for workers' compensation claims may increase or decrease because the bill allows both claimants and employers to impeach the credibility of medical providers and experts, as discussed below.

Analysis

Current Law/Background:

Workers' Compensation Commission

WCC receives, processes, and adjudicates claims for injured employees in the State and works to provide equitable and timely administration of the provisions of the Maryland Workers' Compensation Law to injured workers and their employers. To carry out the responsibilities and requirements assigned to them by the Workers' Compensation Law, WCC members, inspectors, special examiners, and the secretary may issue subpoenas for witnesses to testify before the commission or for the production of relevant documents or records, such as medical records or wage information. Witnesses generally include the claimant's treating physician and medical providers, as well as any medical experts an employer may have testify.

If requested by a party to a proceeding before WCC, WCC must issue a subpoena for a hearing before the commission or for a deposition by the party. A deposition takes place as provided by law for a civil case, and this deposition may only be used to perpetuate testimony and not for discovery. As such, subpoenas can only be issued to compel witness attendance or document production in relation to and at a hearing, and subpoenas for a hearing can only be issued after the hearing date is set.

State Board of Physicians

In Maryland, an individual must be licensed by MBP to practice medicine in the State. The mission of MBP is to assure quality health care in Maryland through the efficient licensure and effective discipline of health providers under its jurisdiction, by protecting and educating clients/customers and stakeholders and enforcing the Maryland Medical Practice Act. The board has regulatory authority over physicians, physician assistants, radiographers, radiation therapists, nuclear medicine technologists, radiologist assistants, respiratory care practitioners, polysomnographic technologists, athletic trainers, perfusionists, and naturopathic doctors.

Generally, the proceedings, records, files, and orders of MBP, its disciplinary panels, and any of its other investigatory bodies are not discoverable and not admissible in evidence; however, these documents are discoverable and admissible if all parties to a proceeding before MBP consent in a civil or criminal action. MBP's orders are also admissible if the information is requested for a civil action brought by a party to a proceeding before MBP and the party claims to be aggrieved by its decision. Finally, if any medical or hospital record or any other exhibit is subpoenaed and otherwise admissible, the use of that record

or exhibit in a proceeding before MBP does not prevent it from being presented in any other proceeding.

State/Chesapeake/Local/Small Business Expenditures: When a covered employee is injured in a workplace accident or otherwise makes a claim for workers' compensation, the employee can select his or her own medical providers instead of receiving medical services from a provider that an employer may suggest. In some situations, an employer may want to impeach the credibility of a claimant's medical provider; similarly, there are situations where a claimant may want to impeach the credibility of the employer's medical providers or experts. The bill allows both sides to access a medical provider's or medical expert's history with MDP, which could uncover information that questions the validity of medical opinions, resulting in smaller or larger payments for workers' compensation claims, depending on what is uncovered. However, any impact on the State, Chesapeake, local governments, and small businesses depends on future cases and, thus, cannot be reliably estimated.

Additional Information

Prior Introductions: None.

Cross File: HB 1160 (Delegate Valderrama) – Economic Matters.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Workers' Compensation Commission, Department of Legislative Services

Fiscal Note History: First Reader - February 11, 2016
kb/ljm

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