

**Department of Legislative Services**  
 Maryland General Assembly  
 2016 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 992 (Delegate Dumais)  
 Judiciary

**Health Care Malpractice Claims - Health Care Alternative Dispute Resolution Office - Repeal**

This bill repeals provisions establishing the Health Care Alternative Dispute Resolution Office (HCADRO) and the Health Claims Arbitration Fund. Thus, the bill repeals HCADRO’s role in arbitrating claims against health care providers and instead establishes the direct filing of claims in a circuit court. The Department of Health and Mental Hygiene (DHMH) is required to forward specified court documents to the State Board of Physicians. The bill requires that, at the end of fiscal 2016, any unspent portions of the Health Claims Arbitration Fund revert to the general fund.

The bill takes effect July 1, 2016, and applies to any case filed on or after that date.

**Fiscal Summary**

**State Effect:** Special fund expenditures decrease by at least \$46,400 beginning in FY 2017 due to the bill’s elimination of HCADRO. General fund expenditures also decrease by at least \$394,000 beginning in FY 2017 due to HCADRO’s elimination; however, general fund expenditures increase by \$125,100 in FY 2017 for DHMH to hire administrative personnel to meet the bill’s requirements, resulting in a net decrease of \$268,900 in FY 2017. General fund revenues may increase by a minimal amount in FY 2017 due to residual funds in the Health Claims Arbitration Fund reverting to the general fund. Otherwise, general and special fund revenues decrease with elimination of the fund’s capitalizing fees.

| (in dollars)   | FY 2017     | FY 2018     | FY 2019     | FY 2020     | FY 2021     |
|----------------|-------------|-------------|-------------|-------------|-------------|
| GF Revenue     | -           | (-)         | (-)         | (-)         | (-)         |
| SF Revenue     | (-)         | (-)         | (-)         | (-)         | (-)         |
| GF Expenditure | (\$268,900) | (\$276,400) | (\$271,600) | (\$266,500) | (\$261,300) |
| SF Expenditure | (\$46,400)  | (\$46,400)  | (\$46,400)  | (\$46,400)  | (\$46,400)  |
| Net Effect     | \$315,300   | \$322,800   | \$318,000   | \$312,900   | \$307,700   |

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Circuit courts likely experience an increased workload as a result of more medical malpractice actions being filed directly in court instead of with HCADRO.

**Small Business Effect:** None.

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## Analysis

### Bill Summary:

*Repeal of HCADRO:* The bill repeals the establishment of HCADRO as a unit in the Executive Department. The bill also repeals the establishment of the Health Claims Arbitration Fund. As a result, claims against health care providers *must* be filed directly in a circuit court.

*Role of DHMH:* The clerk of the court must forward a copy of the complaint, copies of the certificates of qualified experts, the verdict, and any other final disposition to DHMH. If the action is against a physician, DHMH must forward copies of the certificates of qualified experts, the verdict, and any other final disposition to the State Board of Physicians.

**Current Law:** Except for a claim seeking damages within the limit of the District Court's concurrent civil jurisdiction (\$30,000 or less), a claim for medical injury against a health care provider is required to be filed with the Director of the Health Care Alternative Dispute Resolution Office (although the parties may elect mutually or unilaterally to waive arbitration of the claim). The director must serve a copy of the claim on the health care provider by the appropriate sheriff in accordance with the Maryland Rules. If the claim is against a physician, the director must also forward a copy of the claim to the State Board of Physicians. The health care provider must file a timely response with the director and serve a copy of the response on the claimant and any other named health care providers. Claims may be decided through the arbitration process or may proceed to trial.

Unless the sole issue in a health care malpractice claim is lack of informed consent, a claim before HCADRO or an action filed in a court must be dismissed without prejudice if the claimant or plaintiff fails to file with the director, within 90 days from the date of the complaint, a certificate of a qualified expert attesting (1) to a departure from standards of care and (2) that the departure is the proximate cause of the alleged injury. (This certificate is commonly referred to as a "certificate of merit.") However, an extension of at most 90 days for filing the certificate must be granted if (1) the limitations period applicable to the claim or action has expired and (2) the failure to file the certificate was neither willful

nor the result of gross negligence. Each party must file the appropriate certificate with an attached report of the attesting expert.

**Background:** During calendar year 2015, HCADRO handled a total of 680 cases. Of these, parties in 542 cases waived the office's services and proceeded directly to circuit court, 73 were dismissed by the office as ineligible for services, 62 were settled or otherwise ended by the parties, and 3 were arbitrated by the office.

The Health Claims Arbitration Fund is a special, continuing nonlapsing fund that is used exclusively to pay the fees of arbitrators and other operational expenses of HCADRO. The fund consists of filing fees from claims filed with HCADRO. The fee to file a claim, including any third-party claim, is \$40; the fee to file a response to the claim is \$25. The Director of the Health Care Alternative Dispute Resolution Office collects the fees and pays all fees to the Comptroller; 20% of the fees are distributed to the general fund, and the balance is distributed to HCADRO.

**State Fiscal Effect:** The Governor's proposed fiscal 2017 operating budget includes \$393,992 in general funds and \$46,394 in special funds for HCADRO. As a result of the bill eliminating HCADRO, general fund expenditures decrease by about \$393,992 annually and special fund expenditures decrease by about \$46,394 annually, beginning in fiscal 2017. This estimate does not factor in any inflationary or salary increase adjustments.

Additionally, the bill eliminates the Health Claims Arbitration Fund and the fees that capitalize it. A portion of those fees is also distributed to the general fund. Thus, general and special fund revenues decrease beginning in fiscal 2017. However, because the bill requires all remaining funds in the Health Claims Arbitration Fund at the end of fiscal 2016 to revert to the general fund, general fund revenues may instead increase minimally in fiscal 2017, depending on how much remains in the fund at the end of the current fiscal year. As of the end of fiscal 2015, the fund had \$17,798. Funds are projected to be near zero at the end of fiscal 2016.

The Judiciary advises that the number of medical malpractice cases filed with circuit courts may increase as a result of the bill; however, the Judiciary is unsure of the proportion of cases currently being screened out by HCADRO that would actually reach the circuit courts or how many cases might settle pre-trial. HCADRO advises that circuit courts may experience an increased workload related to discovery and other pre-trial procedures; HCADRO currently handles the bulk of these procedures for medical malpractice actions, even for those cases that ultimately proceed to trial.

HCADRO additionally advises that it currently serves as a centralized location for the public to inquire about claims made against health care practitioners. As a result of the

bill's changes, the public may need to consult each local circuit court for information about such claims. Furthermore, HCADRO handles more than 5,000 requests per year for credentialing letters for physicians who wish to practice out of state; should HCADRO be terminated, another agency would need to process these requests.

The bill also shifts responsibility from HCADRO to DHMH for notifying the State Board of Physicians when a claim is filed against a health care practitioner; DHMH must coordinate with local circuit courts to receive this information. DHMH advises that it does not currently collect and process documents regarding health care malpractice actions, and that the bill's requirements are outside the scope of current staff responsibilities.

Therefore, general fund expenditures increase by \$125,052 in fiscal 2017 for DHMH to hire one full-time administrative officer and one full-time office secretary to handle the expected volume of cases, credentialing requests, and associated administrative responsibilities. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

|   |                  |
|---|------------------|
| Positions                               | 2                |
| Salaries and Fringe Benefits            | \$115,122        |
| Operating Expenses                      | <u>9,930</u>     |
| <b>Total FY 2017 State Expenditures</b> | <b>\$125,052</b> |

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

**Additional Comments:** The bill does not apply to any case filed before July 1, 2016. Therefore, HCADRO may continue to receive claims prior to this date; however, HCADRO is eliminated on the bill's effective date regardless of whether there are any pending claims before the office. It is unclear how any pending claims would proceed if HCADRO is eliminated before final adjudication. The bill does not establish a process for adjudicating these claims, nor does it establish a deadline by which claims must be filed with HCADRO before its elimination.

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### **Additional Information**

**Prior Introductions:** HB 547 of 2015, a bill with similar provisions, received a hearing in the House Judiciary Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Health Care Alternative Dispute Resolution Office, Maryland Insurance Administration, Department of Legislative Services

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