

**Department of Legislative Services**  
Maryland General Assembly  
2019 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

Senate Bill 45

(Chair, Finance Committee)(By Request - Departmental -  
Maryland Insurance Administration)

Finance

Economic Matters

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**Health Care Provider Malpractice Insurance - Authorization to Settle -  
Clarification**

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This departmental bill specifies that, for a health care provider malpractice insurance policy (commonly known as medical malpractice), the insurer is authorized, without restriction, to negotiate and effect a compromise of claims (*i.e.*, settlement) unless the settlement amount exceeds the limits of the insurer's liability.

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**Fiscal Summary**

**State Effect:** None. The bill is clarifying in nature and does not affect State operations or finances.

**Local Effect:** None.

**Small Business Effect:** The Maryland Insurance Administration (MIA) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

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**Analysis**

**Current Law:** The Insurance Article requires that each medical malpractice insurance policy 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.

Chapters 209 and 210 of 2016 authorized 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 if the cost of the included coverage is (1) itemized in the billing statement, invoice, or declarations for the policy and (2) reported to the Insurance Commissioner.

**Background:** MIA advises that the bill is intended to clarify an insurer's right to settle cases of medical malpractice. Specifically, some insurers interpret current law to mean that an insurer cannot settle a claim if the policy includes a deductible unless the policy includes a consent-to-settle clause as not all of the settlement would be paid by the insurer (the deductible would be paid by the policyholder). MIA advises that this is inconsistent with the intent of the statute. Therefore, the bill clarifies that an insurer may negotiate a settlement for any amount up to the liability limits of the policy.

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.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Health Care Alternative Dispute Resolution Office; Maryland Insurance Administration; National Association of Insurance Commissioners; Department of Legislative Services

**Fiscal Note History:** First Reader - January 11, 2019  
sb/jc Third Reader - February 1, 2019

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## **ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

**TITLE OF BILL: Insurance – Consent to Settle – Technical Correction**

**BILL NUMBER: SB 45**

**PREPARED BY:**

**(Dept./Agency) Maryland Insurance Administration**

### **PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

**X** WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESSES

### **PART B. ECONOMIC IMPACT ANALYSIS**

The bill clarifies the way this law is already being interpreted in practice and would therefore not have any associated new costs to businesses.