

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 681

(Senator Charles)

Judicial Proceedings

Health Care Malpractice Claims - Health Care Provider - Definition

This bill expands the definition of “health care provider” under Title 3, Subtitle 2A of the Courts and Judicial Proceedings Article (health care malpractice claims) to include an employee, agent, or contractor of a hospital who is licensed, certified, registered, or otherwise authorized to render health care services in Maryland.

Fiscal Summary

State Effect: Potential increase in special fund expenditures if the bill results in higher payments from the State Insurance Trust Fund (SITF) for claims filed under the bill or increased litigation of cases, as discussed below. To the extent SITF incurs losses from payment of claims brought against the Maryland Department of Health (MDH), general fund expenditures for MDH increase due to higher SITF assessments. Any impacts from the bill on the Judiciary and the Health Care Alternative Dispute Resolution Office (HCADRO) can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: The bill is not anticipated to materially affect local finances or operations

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Definitions

Under § 3-2A-01 of the Courts and Judicial Proceedings Article, “health care provider” means a hospital, a related institution (as defined in § 19-301 of the Health – General

Article), a medical day care center, a hospice care program, an assisted living program, a freestanding ambulatory care facility (as defined in § 19-3B-01 of the Health – General Article), a physician, a physician assistant, an osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified social worker-clinical, and a physical therapist, licensed or authorized to provide one or more health care services in Maryland. “Health care provider” does not include any nursing institution conducted by and for those who rely upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination.

Under § 19-301 of the Health – General Article, “hospital” means an institution that (1) has a group of at least five physicians who are organized as a medical staff for the institution; (2) maintains facilities to provide, under the supervision of the medical staff, diagnostic and treatment services for two or more unrelated individuals; and (3) admits or retains the individuals for overnight care.

Health Care Malpractice Claims

Title 3, Subtitle 2A of the Courts and Judicial Proceedings Article contains procedures that apply to health care malpractice actions. The provisions generally do not apply to a claim seeking damages within the limit of the District Court’s concurrent civil jurisdiction (\$30,000 or less). Claims against a health care provider due to a medical injury are required to be filed with the Director of HCADRO. A claim may proceed through the arbitration process, or the claimant or any defendant may waive (or the parties may mutually agree to waive) arbitration of the claim and transfer the case to the appropriate circuit court or U.S. District Court for trial, as specified.

Claimants may receive awards for economic and noneconomic damages. Economic damages include past and future medical expenses and lost wages. In personal injury actions, noneconomic damages mean pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injuries. For wrongful death actions, noneconomic damages mean mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education, or other noneconomic damages authorized under specified wrongful death statutes.

There is no cap on economic damages or punitive damages in Maryland. However, there are caps on noneconomic damages. As of January 1, 2025, Maryland’s cap for noneconomic damages in health care malpractice claims is \$905,000 for causes of action arising during the calendar year; the cap increases by \$15,000 annually. The cap applies in the aggregate to all claims for personal injury and wrongful death arising from the same medical injury, regardless of the number of claims, claimants, plaintiffs, beneficiaries, or

defendants. However, for a wrongful death action in which there are two or more claimants or beneficiaries, the total amount awarded may not exceed 125% of the cap, or \$1,131,250 in 2025.

Health care malpractice claims are subject to a strict statute of limitations. Except as otherwise specified, a claimant must file a claim within five years of the time the injury was committed, or within three years of the date the injury was discovered, whichever is earlier. However, for a case involving a minor-claimant, the statute of limitations is three years from when the minor reaches age 18. The filing of a claim with HCADRO is considered to be the time the action was filed.

Maryland Tort Claims Act

In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under the Maryland Torts Claim Act (MTCA), the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by State personnel performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially “waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort.” *Lee v. Cline*, 384 Md. 245, 262 (2004).

MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State’s color of authority or sovereign immunity and may be held personally liable.

In general, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident or occurrence. Higher limits apply to claims involving law enforcement officers or child sexual abuse.

The State does not waive its immunity for punitive damages. Attorney’s fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment.

State Expenditures: Claims under MTCA are paid out of SITF, which is administered by the State Treasurer’s Office (STO). Agencies pay premiums to SITF that are comprised of an assessment for each employee covered and SITF payments for torts committed by the agency’s employees. An agency’s loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency’s annual premium.

Special fund expenditures for STO increase to the extent the bill's implementation results in higher payments from SITF for claims filed under MTCA or increased litigation costs for MTCA cases brought against MDH. If SITF incurs losses from MTCA payments due to the bill's implementation, MDH is subject to higher SITF premiums/assessments and MDH general fund expenditures increase accordingly.

Most hospitals in Maryland are privately owned; however, there are a small percentage of hospitals in the State (particularly inpatient psychiatric hospital centers) that are operated by MDH. As a result of the bill's expanded definition of "health care provider," these MDH-run hospitals are liable under MTCA for tort claims against a hospital employee, agent, or contractor, unless the claims arise from acts taken outside the scope of such an individual's public duties or that are made with malice or gross negligence.

The magnitude of the bill's fiscal impact cannot be reliably estimated at this time and can only be determined with actual experience under the bill. Many of the health care practitioners that would be defendants in a health care malpractice claim are already included under the existing definition of "health care provider." However, the magnitude of the bill's overall effect on State expenditures depends on the actual volume and monetary value of claims filed *solely* as a result of the bill. Given the nature of health care malpractice claims and the monetary limit under MTCA (\$400,000), even a single claim can be significant.

Small Business Effect: To the extent that additional MTCA cases are filed as a result of the bill, small business law firms that litigate MTCA cases may attract new clients, secure additional casework, and increase their revenues. The bill may also affect small businesses that contract with hospitals to provide health care services.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 926 (Delegate Williams, *et al.*) - Health and Government Operations and Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Maryland State Treasurer's Office; Maryland Health Care Alternative Dispute Resolution Office; Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2025
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