

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1437 (Delegate Arentz)
Health and Government Operations

Catastrophic Health Emergency - Immunity for Health Care Providers - Repeal

This bill repeals § 14-3A-06 of the Public Safety Article, which grants immunity from civil or criminal liability to health care providers who act in good faith under a catastrophic health emergency proclamation issued by the Governor.

Fiscal Summary

State Effect: *Potential* increase in special fund expenditures and general fund expenditures due to increased litigation and payment of claims under the bill. Revenues are not materially affected.

Local Effect: *Potential* increase in local government expenditures for litigation and payment of claims under the bill if any local government employees are considered “health care providers.” Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law: A “catastrophic health emergency” is a situation in which extensive loss of life or serious disability is threatened imminently because of exposure to a deadly agent. A “deadly agent” includes, among other things, a viral agent or biological agent capable of causing extensive loss of life or serious disability. A “health care provider” is a health care facility, a health care practitioner, and an individual licensed or certified as an emergency medical services provider, as specified.

A health care provider is immune from civil or criminal liability if the health care provider acts in good faith and under a catastrophic health emergency proclamation issued by the Governor.

Though it did not address the scope of immunity provided by § 14-3A-06 of the Public Safety Article, the Appellate Court of Maryland, in an unreported opinion, did refer to guidance issued by the Maryland Department of Health on May 6, 2020, indicating that the department does "...not construe the immunity provisions in Pub. Safety Art. § 14-3A-06 or Health Gen. Art. § 18-907 to apply to a healthcare provider or facility performing non-COVID-19 related procedures or appointments." *Constantine v. Baltimore Washington Emergency Physicians, Inc.*, No. 2132, September Term 2022 (filed February 28, 2024).

State Expenditures: Special fund expenditures for the State Insurance Trust Fund (SITF) increase to the extent increased liability exposure under the bill increases payment of claims by the State and encourages the filing of claims against the State. General fund expenditures for affected State agencies increase if agencies are assessed higher SITF assessments under the bill. This estimate assumes that the bill applies to a limited number of cases.

Maryland was under a catastrophic health emergency on two occasions during the COVID-19 pandemic – March 5, 2020, until July 1, 2021, and January 4, 2022, until February 3, 2022. Personal injury and wrongful death actions are subject to a three-year statute of limitations; medical malpractice claims generally must be filed within the earlier of five years from the time the injury was committed or three years of the date the injury was discovered. The Maryland Tort Claims Act (MTCA) contains specific notice and procedural requirements, including the requirement that an action be filed within three years after the cause of action arises.

The magnitude of the effect of the bill's provisions on State finances is difficult to determine due to (1) the infrequent nature of catastrophic health emergencies and the unknown scope of potential future catastrophic health emergencies and (2) the extent to which existing legal defenses, remedies, and doctrines would allow the State to prevail on a claim despite the bill.

However, to the extent the bill results in payments of claims that would not proceed under existing statute, special fund expenditures increase for SITF and general fund expenditures increase for State agencies that are subject to higher SITF assessments.

Claims under MTCA are paid out of SITF, which is administered by the Treasurer's Office. 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. The portion

of the assessment attributable to losses is allocated over five years. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium. That amount is electronically transferred to SITF from the appropriations in an agency's budget.

The bill is not anticipated to materially impact the finances or operations of the Judiciary.

Local Expenditures: Should any local government employees be considered "health care providers," local expenditures increase to the extent the bill increases litigation and payment of claims and increases insurance obligations for local governments.

The Maryland Municipal League advises that the bill does not significantly impact municipal government operations or finances. The bill is not anticipated to materially affect the circuit courts.

Small Business Effect: The bill has a meaningful effect on small business health care providers and small businesses affiliated with health care providers that are exposed to increased litigation, liability, and potential increased costs of insurance coverage as a result of the bill's provisions.

Additional Information

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

Designated Cross File: None.

Information Source(s): Maryland Municipal League; Office of the Attorney General; Maryland State Treasurer's Office; Maryland Department of Health; Department of Legislative Services

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