

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 395
Judiciary

(Delegate Dumais)

Health Care Malpractice Claims - Definition of "Health Care Provider"

This bill expands the definition of “health care provider” for purposes of a health care malpractice claim. The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on, or application to, any cause of action arising before the bill’s October 1, 2014 effective date.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: The bill does not directly affect governmental operations or finances.

Small Business Effect: Potential meaningful for small health care providers and health care practices with employees who now fall under the expanded definition of “health care provider” as discussed below.

Analysis

Bill Summary/Current Law: Under current law, for purposes of a health care malpractice claim, “health care provider” means a hospital, a related institution, a medical day care center, a hospice care program, an assisted living program, a freestanding ambulatory care facility, a physician, 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.

The bill expands the definition of “health care provider” to encompass any practitioner licensed or authorized to provide one or more health care services in Maryland by the State Board of Physicians, the State Board of Examiners in Optometry, the State Board of Chiropractic and Massage Therapy Examiners, the State Board of Nursing, the State Board of Dental Examiners, the State Board of Podiatric Medical Examiners, the State Board of Examiners of Psychologists, the State Board of Social Work Examiners, the State Board of Physical Therapy Examiners, the State Board of Dietetic Practice, the State Board of Occupational Therapy Practice, the State Board of Pharmacy, or the State Board of Professional Counselors and Therapists.

Below is a list of the practitioners licensed or authorized by each of these boards:

- State Board of Physicians: physicians, unlicensed medical practitioners (medical graduates completing postgraduate training), physicians assistants, radiographers, radiation therapists, nuclear medicine technologists, radiologist assistants, respiratory care practitioners, polysomnographic technologists, athletic trainers, and perfusionists
- State Board of Examiners in Optometry: optometrists
- State Board of Chiropractic and Massage Therapy Examiners: chiropractors, chiropractic assistants, massage therapists, and registered massage practitioners
- State Board of Nursing: registered nurses, licensed practical nurses, certified nursing assistants, medical technicians, advanced practice nurses, and electrologists
- State Board of Dental Examiners: dentists, dental hygienists, and dental assistants
- State Board of Podiatric Medical Examiners: podiatrists
- State Board of Examiners of Psychologists: psychologists and psychology associates
- State Board of Social Work Examiners: bachelor social workers, graduate social workers, certified social workers, and certified social workers-clinical
- State Board of Physical Therapy Examiners: physical therapists and physical therapist assistants
- State Board of Dietetic Practice: dietician-nutritionists
- State Board of Occupational Therapy Practice: occupational therapists and occupational therapy assistants
- State Board of Pharmacy: pharmacists and pharmacy technicians

- Board of Professional Counselors and Therapists: alcohol and drug counselors, art therapists, marriage and family therapists, and professional counselors

Further, the bill includes within the definition of “health care provider” an employee or agent delivering or assisting in the delivery of health care services in a hospital or related institution, a medical day care center, a hospice program, an assisted living program, or a freestanding ambulatory care facility, or under the supervision of any of the practitioners licensed or authorized by each of the boards set forth above.

Small Business Effect: Expanding the definition of “health care provider” draws many providers under the Health Care Malpractice Claims subtitle of the Courts and Judicial Proceedings Article. This means that a medical malpractice claim must be adjudicated under procedures which require a plaintiff to file a certificate of a qualified expert and a supplemental certificate attesting to noncompliance with standards of care.

Additionally, the bill’s expansion brings the additional “health care providers” under the special limitation of noneconomic damages for health care malpractice claims. Section 3-2A-09 of the Courts and Judicial Proceedings Article sets a cap on noneconomic damages of \$740,000 for 2014, but that amount increases by \$15,000 every year after December 31. This 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, if there is 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.

In light of these changes, the bill may have a significant impact on health care providers who were not previously protected by the malpractice cap.

Additional Information

Prior Introductions: HB 1310 of 2013, a similar bill, passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 834, was assigned to the Senate Rules Committee, where no further action was taken.

Cross File: SB 702 (Senator Pugh, *et al.*) – Judicial Proceedings.

Information Source(s): Maryland Health Claims Alternative Dispute Resolution Office, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2014
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