

Department of Legislative Services  
2017 Session

**FISCAL AND POLICY NOTE**

**First Reader**

Senate Bill 193

(Senator Klausmeier)

Education, Health, and Environmental Affairs

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**Physicians - Professional Liability Insurance Coverage - Notification and Posting Requirements**

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This bill requires each licensed physician practicing medicine in the State to notify a patient in writing, and on each visit, if the physician does not carry professional liability insurance coverage or if the physician's coverage has lapsed for any period of time and has not been renewed. Notification must be signed by the patient at the time of the patient's visit and kept in the patient's records. Each licensed physician who does not carry professional liability insurance must conspicuously post such information where the licensee practices. The State Board of Physicians (MBP) must develop language regarding the notification requirements.

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**Fiscal Summary**

**State Effect:** MBP can handle the bill's requirements with existing budgeted resources. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law/Background:**

*Medical Professional Liability Insurance and Malpractice Actions*

Medical professional liability insurance (also known as medical malpractice insurance), covers doctors and other professionals in the medical field for liability claims relating to

patient treatment. According to the Maryland Insurance Administration (MIA), the availability and affordability of medical professional liability insurance affects the accessibility of high-quality health care to Maryland residents. Premium rates in Maryland increased significantly between 2002 and 2005 but have remained relatively stable since 2006.

In health care malpractice actions, there are two primary kinds of damages. Noneconomic damages include payment for pain, suffering, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury; economic damages, in contrast, include payment for loss of earnings and medical expenses and are not limited to a maximum amount.

Under the Courts and Judicial Proceedings Article, for health care malpractice causes of action arising in 2017, the cap for noneconomic damages is \$785,000. 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, 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, or \$981,250 in 2017.

#### *Medical Professional Liability Insurance Requirements for Physicians*

Maryland does not require physicians to carry medical professional liability insurance. However, according to the Medical Mutual Liability Insurance Society of Maryland (MMLIS), the largest medical professional liability insurance carrier in the State, physicians are required to carry medical professional liability insurance limits of \$1 million per occurrence or claim and \$3 million per annual aggregate in order to obtain hospital credentialing and to participate in health plans. The vast majority of physicians insured by MMLIS carry these limits (fewer than 12 physicians insured by MMLIS carry limits below these amounts). MMLIS further advises that, while it is possible that some of its insured physicians do not practice in hospitals or participate in health plans, it does not track this information – nor is it possible to estimate how many licensed physicians in Maryland do not currently carry medical professional liability insurance. MIA and MBP are similarly unable to estimate this number, as neither entity collects this information.

According to the American Medical Association, at least seven states (Colorado, Connecticut, Kansas, Massachusetts, New Jersey, Rhode Island, and Wisconsin) require physicians to carry minimum levels of medical professional liability insurance, ranging from \$100,000 to \$1 million per occurrence and \$300,000 to \$3 million per annual aggregate. At least another seven states (Indiana, Louisiana, Nebraska, New Mexico, New York, Pennsylvania, and Wyoming) require physicians to carry minimum levels of coverage to qualify for state liability reforms, including caps on damages or patient compensation funds.

In addition, at least five states (Alaska, Florida, Montana, Ohio, and Oregon) require physicians or similar providers to notify a patient if they do not have medical professional liability insurance.

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### **Additional Information**

**Prior Introductions:** SB 5 of 2011, a similar bill, passed the Senate and received a hearing in the House Health and Government Operations Committee, but no further action was taken on the bill. SB 402 of 2010, an identical bill as introduced, passed the Senate but received an unfavorable report from the House Health and Government Operations Committee. Similar bills were also introduced in the 2009 session.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene; Maryland Insurance Administration; American Medical Association; Medical Mutual Liability Insurance Society of Maryland; Department of Legislative Services

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