

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader - Revised

Senate Bill 311

(Senator Hettleman)

Judicial Proceedings

Catastrophic Health Emergencies - Health Care Providers - Definition and
Immunity (Maryland Health Care Heroes Protection Act)

This emergency bill alters provisions regarding a health care provider’s immunity from civil or criminal liability while a proclamation of a catastrophic health emergency issued by the Governor is in effect. **The bill applies retroactively and must be applied to and interpreted to affect health care provider civil and criminal immunity for any act or omission committed in furtherance of providing or assisting in the provision of health care services resulting from a catastrophic health emergency occurring on or after March 5, 2020.**

Fiscal Summary

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

Local Effect: Potential reduction in local expenditures for litigation and payment of claims under the bill. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law: Under 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.

The bill expands the definition of a “health care provider” to include an employee, an agent, or a contractor of a health care facility who provides or assists in the provision of health care services.

Under current law, 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.

Under the bill, a health care provider is immune from civil or criminal liability for any act or omission committed in furtherance of providing or assisting in the provision of health care services resulting from a catastrophic health emergency proclamation if (1) the health care provider committed the act or omission in good faith and (2) the act or omission was committed during a catastrophic health emergency or within 180 days after the termination of the catastrophic health emergency. This immunity must apply to any act or omission committed by a health care provider that is directly or indirectly related to a catastrophic health emergency proclamation. A court’s denial or grant of a health care provider’s motion to apply this immunity must be immediately appealable.

State Expenditures: Special fund expenditures for the State Insurance Trust Fund (SITF) decrease to the extent the bill reduces payment of claims by the State and deters the filing of claims against the State. General fund expenditures for affected State agencies decrease if agencies are able to avoid higher SITF assessments under the bill.

The magnitude of the effect of the bill’s provisions on State finances is difficult to determine given (1) how recently the COVID-19 pandemic, which is the current catastrophic health emergency, commenced and its ongoing status, as well as the unknown scope of potential future catastrophic health emergencies; (2) the lack of information regarding the number of existing claims related to the provision of health care services resulting from the COVID-19 health emergency; (3) the lack of information on the number of potential future claims and the nature of those claims; (4) unknown judicial interpretation of the bill, including the scope of individuals covered and the variety of acts or omissions to which immunity applies; and (5) the extent to which existing legal defenses, remedies, and doctrines would allow the State to prevail on a claim absent the bill.

However, to the extent the bill deters the filing of claims and allows the State to prevail on a claim, special fund expenditures decrease for SITF and general fund expenditures decrease for State agencies that would otherwise be subject to higher SITF assessments. Given the general three-year statute of limitations applicable to civil lawsuits, the majority of the bill’s effect relating to COVID-19 claims will likely be experienced in the near

future. Furthermore, the Maryland Tort Claims Act (MTCA) contains specific notice and procedural requirements. A claimant is prohibited from instituting an action under MTCA unless (1) the claimant submits a written claim to the State Treasurer or the Treasurer's designee within one year after the injury to person or property that is the basis of the claim; (2) the State Treasurer/designee denies the claim finally; and (3) the action is filed within three years after the cause of action arises.

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, as discussed in further detail below.

Local Expenditures: For reasons similar to the ones stated above, local expenditures decrease to the extent the bill reduces litigation and payment of claims and prevents increases in insurance obligations for local governments.

Assuming that lawsuits related to the bill are most likely to be filed in the circuit courts, the bill may affect circuit court operations if it (1) shortens the course of litigation of claims or (2) deters cases from being filed. However, any such operational impact is not anticipated to materially affect circuit court finances.

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 able to avoid litigation, liability, and potential increased costs of insurance coverage as a result of the bill's provisions.

Additional Comments: On March 5, 2020, Governor Lawrence J. Hogan, Jr., declared a state of emergency and catastrophic health emergency in an effort to control and prevent the spread of COVID-19. The state of emergency was most recently renewed on March 18, 2021.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 25 (Delegate Cullison) - Judiciary and Health and Government Operations.

Information Source(s): Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Local Government Insurance Trust; Maryland Association of Counties; Department of Legislative Services

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