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2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 950 (Senator Kagan)
Judicial Proceedings and Finance

Conversion Therapy - Prohibitions and Causes of Action

This emergency bill (1) establishes a health care malpractice cause of action for the provision of conversion therapy; (2) establishes criminal liability for providing conversion therapy; (3) establishes another civil cause of action that a recipient of conversion therapy in violation of the new criminal prohibition may pursue against the violator; (4) requires a professional liability insurer to impose a surcharge on the premiums of a licensed health care provider who provides conversion therapy; and (5) establishes the Conversion Therapy Surcharge Fund, to be administered by the Maryland Insurance Administration (MIA). The bill contains a severability provision.

Fiscal Summary

State Effect: No assumed revenues or expenditures in FY 2026. Beginning in FY 2027, special fund revenues increase from surcharges (to the extent any are collected), with corresponding special fund expenditures if the fund makes authorized payments. The bill can be implemented with existing resources and does not otherwise materially affect State finances and operations.

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Prohibition on Conversion Therapy (Unchanged by the Bill)

Chapter 685 of 2018 prohibits specified mental health or child care practitioners from engaging in conversion therapy with a minor. A violation of this prohibition is considered

unprofessional conduct and is subject to discipline by the appropriate licensing or certifying board. Additionally, State funds may not be used to (1) conduct or refer an individual to receive conversion therapy; (2) provide health coverage for conversion therapy; or (3) provide a grant to, or contract with, any entity that conducts or refers an individual to receive conversion therapy.

Health Care Malpractice Actions

In General: Title 3, Subtitle 2A contains extensive provisions that address health care malpractice claims, including procedures and caps on damages. In general, in order to prevail in a health care malpractice claim, a plaintiff must prove that a health care provider owed the patient a duty to adhere to the standard of care; the provider breached that duty by departing from the standard of care; the breach of this duty directly caused the plaintiff's injuries; and the plaintiff sustained damages as a result of these injuries.

Definitions: Under current law, "medical injury" means injury arising or resulting from the rendering or failure to render health care. The bill specifies that "medical injury" includes psychological injury arising or resulting from "conversion therapy" provided in the State. The bill defines "conversion therapy" as a practice or treatment by a mental health or child care practitioner that seeks to change an individual's sexual orientation or gender identity; it includes any effort to change the behavioral expression of an individual's sexual orientation, change gender expression, or eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. The definition does not include specified practices, including sexual-orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices and that do not seek to change sexual orientation or gender identity.

Qualified Experts: Under current law, before a health care malpractice lawsuit can be filed, a plaintiff in a health care malpractice claim must file a certificate of a qualified expert attesting to the defendant's departure from the standards of care with the Maryland Health Care Alternative Dispute Resolution Office. A health care provider who attests in a certificate of a qualified expert or testifies before a panel or court regarding the defendant's adherence to the standard of care must meet specified professional qualifications, including, subject to specified exceptions, that if the defendant is board certified in a specialty, the expert must be board certified in the same or a related specialty. The bill adds an exception to this requirement that, in an action for damages relating to conversion therapy, in addition to any other qualifications, a health care provider who attests in a certificate of a qualified expert or testifies in relation to a proceeding before a panel or court concerning a defendant's compliance with or departure from standards of care may be any licensed mental health provider or researcher with expertise in the psychological effects of conversion therapy.

New Health Care Malpractice Cause of Action: The bill authorizes an individual to file a health care malpractice action for damages for injury caused by the provision of conversion therapy to the individual against:

- the licensed health care provider who provided the conversion therapy;
- a person that employed, supervised, or otherwise exercised authority over that licensed health care provider who provided the conversion therapy if the person knew or had reason to know that the provider provided conversion therapy and failed to take reasonable steps to prevent the provision of the therapy; or
- a person that negligently hired, supervised, or retained the licensed health care provider who provided the conversion therapy.

The plaintiff has the burden of proof to demonstrate – through expert testimony, scientific literature, and other evidence – that conversion therapy is capable of causing the medical injury suffered by the plaintiff. The defendant has the burden of proof to show by a preponderance of the evidence that the plaintiff’s medical injury is solely a result of other factors unrelated to the conversion therapy.

A plaintiff in this action may seek economic damages, noneconomic damages, punitive damages, and attorney’s fees and court costs. Further, there is no cap on the amount of noneconomic damages that may be awarded to a single claimant in an action against a single defendant. There is no statute of limitations on this civil cause of action if the conversion therapy was provided when the plaintiff was a minor. If the therapy was provided when the plaintiff was an adult, the action must be filed within 20 years after the plaintiff’s last conversion therapy session. The bill contains provisions pertaining to calculation of the discovery of the medical injury for purposes of the statute of limitations.

Criminal Liability for Conversion Therapy (New Under the Bill)

The bill prohibits a person (including a nonprofit entity) from providing conversion therapy for compensation or making false, misleading, or deceptive statements relating to the provision of conversion therapy, as specified. Violators are guilty of a felony, punishable by imprisonment for up to five years and/or a \$50,000 maximum fine. This provision does not apply to a “mental health or child care practitioner,” which is defined under the bill as a practitioner licensed or certified under specified provisions of the Health Occupations Article or any other practitioner licensed or certified under the Health Occupations Article who is authorized to provide counseling by the practitioner’s license or certifying board.

The bill authorizes an individual who received conversion therapy in violation of this criminal prohibition to bring a civil action for damages against the violator; this civil cause of action is similar to the health care malpractice civil action discussed above.

Civil Statutes of Limitation – Current Law

In general, the statute of limitations for a civil action requires that a civil action must be filed within three years from the date it accrues unless another statutory provision permits a different period of time within which an action can be commenced. The “discovery rule” is applicable generally in all actions, and the cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong. *Poffenberger v. Risser*, 290 Md. 631 (1981). The statute of limitations for a minor’s personal injury claim is generally tolled until the minor reaches age 18.

A health care malpractice claim must be filed within the earlier of five years from the time the injury was committed or three years from the date when the injury was discovered. With specified exceptions for reproductive and foreign object injuries, if the claimant was younger than age 11 at the time the injury was committed, these time limitations commence when the claimant reaches age 11.

Damages – Current Law

Actual damages, also known as compensatory damages, are intended to make a plaintiff whole by returning the plaintiff to the position the plaintiff was in prior to the alleged harm caused by the defendant. Actual damages include both economic damages and noneconomic damages. Economic damages include compensation for things like lost wages and medical expenses. Noneconomic damages means (1) for personal injury actions – pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury and (2) for wrongful death actions – 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 statutes pertaining to wrongful death causes of action. Noneconomic damages do not include punitive damages.

There is no cap on economic damages or punitive damages in Maryland. However, there are caps on noneconomic damages. Separate caps apply to noneconomic damages in medical malpractice cases and non-medical malpractice cases involving personal injury and wrongful death actions.

For health care malpractice actions, the current caps were set on January 1, 2026. As of January 1, 2026, Maryland’s cap for noneconomic damages in medical malpractice claims is \$920,000; the cap increases by \$15,000 on January 1 of each year. 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, the cap is 125% of that amount in wrongful death actions in which

there are two or more claimants or beneficiaries, whether or not there is a personal injury action arising from the same medical injury and regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants. As of January 1, 2026, this cap is \$1,150,000. The cap for individual causes of action is based on the date of the incident.

In any action for damages for personal injury or wrongful death (excluding medical malpractice) in which the cause of action arises on or after October 1, 1994, an award for noneconomic damages may not exceed \$500,000. This limitation increases by \$15,000 on October 1 of each year, beginning on October 1, 1995. The increased amount must apply to causes of action arising between October 1 of that year and September 30 of the following year, inclusive. (As of October 1, 2026, this cap will be \$980,000.) This limitation applies in a personal injury action to each direct victim of tortious conduct and all persons who claim injury by or through that victim.

In a wrongful death action (excluding medical malpractice) in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation listed above, regardless of the number of claimants or beneficiaries who share in the award. (As of October 1, 2026, this cap will be \$1,470,000). The cap applies separately to a wrongful death claim and a survival action. (Thus, the cap for a wrongful death claim involving two or more claimants or beneficiaries accompanied by a survival action is \$2,450,000 as of October 1, 2026.)

An award by the health claims arbitration panel in accordance with specified provisions for damages in which the cause of action arose *before January 1, 2005*, must be considered an award for purposes of these provisions.

In contrast to actual damages, punitive damages do not compensate plaintiffs for their losses. Rather, punitive damages are designed to punish and deter blameworthy behavior. In *Owens-Illinois v. Zenobia*, 325 Md. 420 (1992), the Maryland Court of Appeals (now the Supreme Court of Maryland) held that, in a nonintentional tort action, the trier of fact may not award punitive damages unless the plaintiff establishes that the defendant's conduct was characterized by "actual malice" – meaning evil motive, intent to injure, ill will, or fraud. The requirement for actual malice is somewhat modified in the common law regarding product liability. Maryland courts have found that the actual malice standard necessary to support an award of punitive damages is actual knowledge of a defect and a deliberate disregard of the consequences. (See *AC and S v. Goodwin*, 340 Md. 334 (1995).)

A party must be awarded compensatory damages in order to recover punitive damages. *Fisher v. McCrary Crescent City, LLC.*, 186 Md. App. 86 (2009). While there is no cap on punitive damages, according to Maryland Civil Pattern Jury Instruction 10:14, an award for punitive damages should be (1) in an amount that will deter the defendant and others

from similar conduct; (2) proportionate to the wrongfulness of the defendant's conduct and the defendant's ability to pay; and (3) not designed to financially destroy a defendant.

Professional Liability Insurance and the Conversion Therapy Surcharge Fund

Under current law, § 19-117 of the Insurance Article prohibits a professional liability insurer that provides an insurance policy to a licensed health care provider from taking adverse action against a health care practitioner because the health care practitioner provides legally protected health care or makes a referral for legally protected health care. The bill specifies that "legally protected health care" does not include conversion therapy.

Under the bill, these professional liability insurers must impose a 35% surcharge on premiums to a practitioner that practices conversion therapy in the State. Surcharge revenues must be deposited into the Conversion Therapy Surcharge Fund, established under the bill and to be administered by MIA.

The purpose of the fund is to reimburse a plaintiff that successfully recovers damages in a health care malpractice claim against a conversion therapy provider. Money from the fund may only be expended for this purpose and may be made only in accordance with the State budget.

The fund consists of (1) revenue from the surcharge; (2) money appropriated to the fund in the State budget; and (3) any other money from any other source accepted for the benefit of the fund. The fund is a special, nonlapsing fund that is not subject to reversion requirements under § 7-302 of the State Finance and Procurement Article. The Treasurer must hold the fund separately, and the Comptroller must account for the fund.

State Fiscal Effect: Special fund revenues increase if health care practitioners are charged surcharges on professional liability insurance premiums. Given current professional restrictions on conversion therapy, general views on the practice within health professional communities, and disincentives for health professionals to continue to practice conversion therapy under the bill, it is unclear if *any* surcharges will be imposed and collected. This estimate assumes that surcharge revenues, to the extent they are realized, gradually decline due to increases in premiums, increased awareness of the bill's provisions, and decreased provision of conversion therapy services. Special fund expenditures are incurred, by an unpredictable amount and at an unpredictable pace, if (1) surcharge revenues are actually collected and (2) individuals are eligible for special fund payments after successfully recovering damages from defendants in health care malpractice actions for conversion therapy. Any revenues for MIA from new rate filings and form filings in response to the bill are assumed to be negligible.

The bill can be implemented with existing budgeted resources. While MIA advises that it can implement the bill with existing budgeted resources, the Judiciary advises that the creation of a Criminal Justice Information System (CJIS) code to correspond with the criminal offense established under the bill requires \$13,449 in additional expenditures for one-time computer programming. The Department of Legislative Services advises that given the frequency with which the legislature creates new criminal offenses, these costs are absorbable with existing budgeted resources, and the programming of new CJIS codes is likely an annual task that is incorporated into regular information technology work plans.

Small Business Effect: The bill may have a meaningful effect on small businesses that are subject to increased civil liability, criminal liability, and higher insurance costs as a result of the bill's provisions. The extent to which small businesses in the State currently practice conversion therapy is unknown at this time.

Additional Information

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

Designated Cross File: HB 1209 (Delegate Cullison, *et al.*) - Judiciary and Health.

Information Source(s): Maryland Association of County Health Officers; Anne Arundel, Baltimore, Cecil, Frederick, and Somerset counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Public Safety and Correctional Services; Maryland Health Care Alternative Dispute Resolution Office; Maryland Insurance Administration; Department of Legislative Services

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