

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

House Bill 194  
Judiciary

(Delegate Zirkin, *et al.*)

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Health Care Malpractice Claims - Collateral Sources

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This bill alters the itemization of damages required in an award or verdict in a health care malpractice claim or action. The bill also requires, rather than allows, an arbitration panel or court to reduce a health care malpractice award or verdict by the amount of the past medical expenses that have been or will be paid, reimbursed, or indemnified under statute, insurance, or contract, less the claimant's or plaintiff's cost to obtain the payment, reimbursement, or indemnity.

The bill does not apply to a cause of action arising before October 1, 2005.

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Fiscal Summary

**State Effect:** The bill would not materially affect governmental operations or finances.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** An arbitration panel or the trier of fact in a trial must itemize the award or verdict to reflect the monetary amount intended for: (1) past medical expenses; (2) future medical expenses; (3) past loss of earnings; (4) future loss of earnings; (5) noneconomic damages; (6) in a wrongful death action, the pecuniary loss or benefit; and (7) other damages.

Damages for past medical expenses in an award or verdict may not be modified as to any sums paid or payable to a claimant: (1) under any criminal injuries compensation act; or (2) for which a right to recover from the claimant or for which a right to assert a claim of subrogation against a defendant is expressly provided by federal statute.

An arbitration panel chairman, if satisfied that modification is supported by the evidence, must modify the award for damages for past medical expenses, less the cost to obtain the payment reimbursement, or indemnity. The bill provides that the current restrictions on modification of damages by a panel chairman do not apply to sums paid or payable for past medical expenses. On a motion by a party, damages for past medical expenses in a verdict must be reduced on the ground that the claimant will be paid, reimbursed, or indemnified to the same extent and subject to the same limits as apply to an arbitration panel. The court must hold a hearing and receive evidence on the motion. If the court finds that the damages for past medical expenses have been or will be paid, reimbursed, or indemnified in the described manner, the court must modify the damages for past medical expenses in the verdict.

Unless otherwise provided under federal law, a person may not recover from a claimant or assert a claim of subrogation against a defendant for any sum included in a modification of damages for past medical expenses in a verdict.

**Current Law:** A party to a health claims arbitration panel may apply to modify or correct as aware as to liability, damages, or costs. The application may include a request that damages be reduced to the extent that the claimant has been or will be paid, reimbursed, or indemnified under statute, insurance, or contract for all or part of the damages assessed. An arbitration panel chairman, after hearing evidence, may modify the award if satisfied that the modification is supported by the evidence. However, the award may not be modified as to sums paid or payable to a claimant under a workers' compensation act, criminal injuries compensation act, specified employee benefit plans, or a benefit under any contract or policy of life insurance or Social Security Act. An award may not be modified as to any damages assessed for any future expenses, costs, and losses unless the panel chairman orders the defendant or the defendant's insurer to provide adequate security or, if the insurer is an authorized insurer, maintains reserves as required by the Maryland Insurance Commissioner.

An arbitration panel and, upon timely request, the trier of fact in a trial must itemize damages assessed for: (1) incurred medical expenses; (2) rehabilitation costs; and (3) loss of earnings. Future expenses, costs, and losses must be itemized separately.

Past medical expenses are limited to the total amount paid by or on behalf of the plaintiff plus the total amount incurred but not paid, if the plaintiff or another person on the plaintiff's behalf is obligated.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Maryland Insurance Administration, Office of the Attorney General, Department of Legislative Services

**Fiscal Note History:** First Reader - March 11, 2005  
mam/jr

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