

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

House Bill 485  
Judiciary

(Delegate Zirkin, *et al.*)

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Health Care Malpractice - Periodic Payments

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This emergency bill requires periodic payments of awards for future damages and noneconomic damages in a health care malpractice claim arising on or after January 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:** The arbitration panel or trier of fact in a court proceeding must itemize a malpractice verdict to show: (1) past medical expenses; (2) future medical expenses; (3) past loss of earnings; (4) future loss of earnings; (5) past pecuniary loss; (6) future pecuniary loss; (7) other past economic damages; (8) other future economic damages; and (9) noneconomic damages.

Unless a defendant and claimant or plaintiff have arranged for an alternative payment method, if future economic and noneconomic damages exceed \$100,000, an arbitration panel or court must order payment of future damages in periodic payments as specified under the bill or other payments consistent with the needs of the claimant or plaintiff. The claimant or plaintiff and the defendant may submit a proposal to comply with the

periodic payment requirement. The panel or court must consider a proposal, and it may order a defendant to comply with the proposal, with any appropriate modifications. However, the court or panel need not accept a proposal and may order payments in a manner it considers fair and appropriate.

If, for good cause shown, the panel or court finds that the claimant or plaintiff will incur immediate one-time expenses, the panel or court: (1) may order the defendant to pay that amount as a lump sum; and (2) unless the remaining amount is less than \$100,000, must order the remaining amount in periodic payments.

For a wrongful death or a survival action, noneconomic damages are paid as part of the lump sum containing past economic damages, past pecuniary loss, and other past economic damages. Damages for future pecuniary loss and other future economic damages of \$100,000 or more must be paid in periodic payments as specified under the bill.

If an award or judgment is subject to periodic payments, the defendant must pay a claimant's or plaintiff's attorney the contracted amount in periodic payments according to the percentage amount stated in the contract for each periodic payment received by the claimant or plaintiff.

**Current Law:** Upon timely request, the arbitration panel or trier of fact in a court proceeding 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.

A court or health claims arbitration panel may order that all or part of the future economic damages be paid in the form of an annuity or other financial instrument, or that they be paid in periodic or other payments, consistent with the plaintiff's needs, funded by the defendant or the defendant's insurer. If the plaintiff dies before the final periodic payment, the unpaid balance of the award for future loss of earnings reverts to the plaintiff's estate, and the unpaid balance for future medical expenses reverts to the defendant or the defendant's insurer.

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### **Additional Information**

**Prior Introductions:** Bills containing a requirement for periodic payments, SB 193 and HB 287, were introduced during the 2004 session. SB 193 received an unfavorable report from the Judicial Proceedings Committee, and HB 287 received an unfavorable report from the Judiciary Committee.

**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 13, 2005  
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