

# MEDICAL MUTUAL

*Liability Insurance Society of Maryland*

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**Bill:** House Bill 1037 – Civil Actions – Noneconomic Damages – Personal Injury or Wrongful Death  
**Date:** February 26, 2020  
**Position:** *OPPOSE*

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## ***Bill Summary***

House Bill 1037 eliminates the cap on noneconomic damages for personal injury and wrongful death claims where a finder of fact determines that the damages were caused by one or more willful, wanton, malicious, reckless, or grossly negligent acts or omissions.

## ***Medical Mutual's Position***

In Maryland, plaintiffs may be entitled to economic damages, noneconomic damages, and in rare cases, punitive damages.<sup>1</sup> Economic damages include past and future “loss of earnings and medical expenses.”<sup>2</sup> Noneconomic damages, on the other hand, include pain and suffering.<sup>3</sup> Punitive damages are awarded in cases where the plaintiff has proven, by clear and convincing evidence, that the defendant acted with actual malice.<sup>4</sup> Currently, the cap on noneconomic damages for actions other than malpractice is codified in Maryland Code, § 11-108 of the Courts and Judicial Proceedings Article, and for medical malpractice cases, the cap on noneconomic damages is codified in Maryland Code, § 3-2A-09 of the Courts and Judicial Proceedings Article.

At first blush, House Bill 1037 would eliminate the noneconomic damages cap on what a plaintiff may recover in actions other than medical malpractice<sup>5</sup> where a finder of fact determines that the damages resulted from one or more willful, wanton, malicious, reckless, or grossly negligent acts or omissions. A closer reading of House Bill 1037 reveals, however, that House Bill 1037 would also apply to medical malpractice actions because the bill includes the following language: “Notwithstanding any other provision of law.” Although medical malpractice cases involving any sort of willful, wanton, malicious, reckless, or grossly negligent acts or omissions are uncommon, Medical Mutual opposes House Bill 1037 for the following reasons.

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<sup>1</sup> See *Bishop v. Holy Cross Hospital of Silver Spring*, 44 Md. App. 688 (1980) (discussing punitive damages in medical malpractice).

<sup>2</sup> See Md. Code, Cts. & Jud. Proc. § 11-108. This definition of economic damages is applicable to medical malpractice actions pursuant to Maryland Code, § 3-2A-01(e) of the Courts and Judicial Proceedings Article, which states that “[e]conomic damages’ retains its judicially determined meaning.”

<sup>3</sup> See Md. Code, Cts. & Jud. Proc. §§ 3-2A-01(h), 11-108(a)(2).

<sup>4</sup> See *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 460, 469 (1992).

<sup>5</sup> See Md. Code, Cts. & Jud. Proc. § 11-108.

First, House Bill 1037 is unnecessary because Maryland plaintiffs currently have the ability to recover unlimited punitive damages. Punitive damages may be awarded by a finder of fact when it is proven, by clear and convincing evidence, that a defendant's actions involved actual malice or its legal equivalent. House Bill 1037 expands punitive damages in the guise of noneconomic damages. In doing so, the bill eliminates the actual malice or legal equivalent requirement for punitive damages and replaces it with the lesser requirement of willful, wanton, malicious, reckless, or gross negligence. In *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 459-60 (1992), the Court of Appeals rejected this lesser standard, and it should not be adopted here.

Additionally, House Bill 1037 usurps the current standard of clear and convincing evidence for punitive damages and appears to permit these same damages by a mere preponderance of evidence. Under House Bill 1037, a plaintiff could allege that there was a willful, wanton, malicious, reckless, or grossly negligent act or omission in an informed consent cause of action, for example, and recover additional damages without the *Zenobia* requirement to prove actual malice by clear or convincing evidence. Under this bill, virtually any tort could subject a defendant to unlimited damages because of what appears to be a lowered standard of proof: preponderance of evidence. This standard of proof was also properly rejected by the Court of Appeals of Maryland in *Zenobia*.<sup>6</sup>

House Bill 1037 unnecessarily attempts to overturn established Maryland case law. It is our view that House Bill 1037 will result in more claims with unfettered damages and, therefore, would negatively impact professional liability premiums for Maryland doctors.

For the reasons contained herein, Medical Mutual respectfully requests an **UNFAVORABLE** report of **House Bill 1037**.

**For more information contact:**

Cheryl F. Matricciani / [cmatricciani@weinsuredocs.com](mailto:cmatricciani@weinsuredocs.com)

Ashton DeLong / [adelong@weinsuredocs.com](mailto:adelong@weinsuredocs.com)

(410) 785-0050

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<sup>6</sup> *Zenobia*, 325 Md. at 469.