

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 1425  
Judiciary

(Delegate Donoghue, *et al.*)

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Health Care Malpractice Actions - Payment of Future Damages

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This bill requires a court, on the motion of any party, to appoint a neutral expert on the question of future damages if a verdict for future damages exceeds \$250,000.

The bill applies to a verdict for a cause of action arising on or after the bill's October 1, 2006 effective date.

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Fiscal Summary

**State Effect:** Any procedural change in activities because of the bill would not materially affect the overall finances or operations of the Judiciary.

**Local Effect:** See above.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** If a verdict for future damages exceeds \$250,000, on a motion of any party, the court must appoint a neutral expert to: (1) evaluate whether all or part of the future damages should be paid in the form of annuities or other appropriate financial instruments or in periodic or other payments consistent with the plaintiff's needs, funded by the defendant or the defendant's insurer; and (2) if the expert finds that it would be appropriate and in the interest of justice to do so, recommend how the payments should be structured.

Under the bill, “future damages” means future economic and noneconomic damages, but it does not include future loss of earnings.

A neutral expert must be appointed from a list of qualified experts maintained by the Administrative Office of the Courts, and the Court of Appeals may adopt rules governing the selection and qualifications of these experts. To be eligible for appointment, an individual must also meet specified criteria.

Each party must provide any information and records that the neutral expert determines to be needed, including information that would otherwise be confidential. Unless the court grants an extension for good cause, the neutral expert must report his/her findings and recommendations to the court and each attorney of record within 60 days after the appointment. The court must hold a hearing on the report on a motion of any party.

If a court rejects the neutral expert’s findings and recommendations, the court must make a written finding or a specific finding on the record stating its reasons for the rejection. The court must assess the costs of the neutral expert against the party or parties who requested the expert’s appointment.

The bill specifies acceptable forms of annuities, and it requires the court to approve an annuity if the annuity is one of those forms and will at all times be secured by assets meeting specified requirements.

If the court orders that all or part of the future damages be paid in the form of an annuity, the amount of attorneys’ fees owned by the plaintiff to his/her attorney must be based on the cost of the annuity rather than the amount of the judgment, unless the court finds that the amount would be unreasonable under the circumstances. If the court finds that the amount would be unreasonable under the circumstances, the court may order a higher or lower amount based on specified criteria.

**Current Law:** A court may on its own motion or the motion of a party employ a neutral expert witness to testify on the issue of a plaintiff’s future medical expenses and future loss of earnings. Unless otherwise agreed by the parties, the costs are divided equally by the parties.

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, and equal to the amount of the future damages award. If the court or panel orders future economic damages and 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.

Awards for economic damages may be reduced by an arbitration panel, on application of a party. 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 for some or all of the damages assessed. If a defendant objects to the damages amounts as excessive after a trial, the court must hold a hearing. If the court finds that the damages are excessive, the court may then grant a new trial on damages or, if the plaintiff agrees, grant a remittitur.

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### **Additional Information**

**Prior Introductions:** Provisions requiring future damages to be paid through annuities, periodic payments, or other similar means were included in SB 221, HB 301, HB 485, and HB 1212 of 2005; SB 1 and HB 1 of the 2004 Special Session; and SB 193 and HB 287 of 2004. In 2005, SB 221 was heard in the Senate Judicial Proceedings Committee, but no further action was taken. HB 301, HB 485, and HB 1212 were heard in the House Judiciary Committee. No further action was taken on HB 301 or HB 485. HB 1212 was withdrawn after its hearing. During the 2004 special session, SB 1 received an unfavorable report from the Senate Rules Committee, and HB 1 received an unfavorable report from the House Rules and Executive Nominations Committee. In 2004, SB 193 received an unfavorable report from the Judicial Proceedings Committee, and HB 287 received an unfavorable report from the House Judiciary Committee.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 9, 2006  
ncs/jr

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