

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 936
Judiciary

(Delegate Morhaim, *et al.*)

Health Care Malpractice - Damages - Periodic Payments

This bill requires periodic payments of awards for future damages and noneconomic damages in a health care malpractice claim arising on or after June 1, 2006.

The bill takes effect June 1, 2006.

Fiscal Summary

State Effect: Altering the payment method for damages would not materially affect the overall caseload of the Judiciary.

Local Effect: See above.

Small Business Effect: Minimal.

Analysis

Bill Summary: Unless a defendant and claimant or plaintiff have arranged for an alternative payment method, if future economic damages and noneconomic damages exceed \$250,000, an arbitration panel or court must enter as the award or verdict for future economic damages and noneconomic damages as specified under the bill. Except for a survival or wrongful death action, the court must also order the defendant to pay: (1) \$100,000 as a lump sum with past economic damages; and (2) the remainder in periodic payments in the form of an annuity.

For a survival or wrongful death action, noneconomic damages must be paid as a lump sum, and only future economic damages that exceed \$250,000 are subject to periodic payments.

For a claim subject to the bill, the finder of fact must determine future economic damages without discounting them to present value and itemize the future economic damages as specified. The finder of fact must also determine specified information relating to loss of earnings in a personal injury claim, and the period for which the claimant might reasonably have expected a pecuniary benefit from the decedent in a wrongful death claim.

After the finder of fact makes the determinations, the defendant must determine and provide to the arbitration panel or the court the purchase price of an annuity that will satisfy the bill's requirements. The annuity must also produce periodic payments for: (1) future medical expenses and future loss of earnings in a personal injury claim; or (2) pecuniary loss or benefit in a wrongful death claim. The amount for future economic damages and, if appropriate, noneconomic damages must be reduced by the amount of the lump-sum payment made under the bill.

The court or arbitration panel must enter as the award or verdict for future economic damages and noneconomic damages the lump-sum payment plus the purchase price of the annuity. The defendant or the defendant's insurer may purchase multiple annuities if, in the aggregate, the annuities satisfy the bill's requirements. The defendant's insurer is obligated to purchase an annuity only to the extent of its liability.

An annuity purchased to fund future loss of earnings must have a guaranteed term equaling the lesser of: (1) the number of years for which the claimant will suffer a loss of earnings; or (2) the working life of the claimant. If the claimant dies before the end of the guaranteed term, the unpaid balance must be paid to the claimant's estate.

An annuity purchased to fund future medical expenses, noneconomic damages, or pecuniary loss or benefit does not have a guaranteed term and terminates at the death of the claimant.

An annuity purchased under the bill must meet specified strength criteria, and the arbitration panel or court must approve the annuity purchase if the annuity meets the bill's requirements and will at all times be fully secured by assets specified under the bill. The purchase of an annuity is deemed to fully satisfy the portion of the award or verdict for future economic damages and noneconomic damages not subject to the bill's lump-sum requirements. If the lump-sum payment does not satisfy the claimant's or plaintiff's

obligation to pay attorney's fees, the arbitration panel or court must increase the lump-sum payment accordingly and reduce, by that amount, the purchase price of the annuity.

Current Law: 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.

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, Office of the Attorney General, Department of Legislative Services

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