

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 550 (Senator Gladden)
Judicial Proceedings

Health Care Malpractice - Death - Noneconomic Damages

This bill increases the maximum amount of noneconomic damages allowable in an action for health care malpractice.

The bill takes effect January 1, 2009.

Fiscal Summary

State Effect: The bill would not directly affect State finances or operations.

Local Effect: The bill would not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary/Current Law: Under current law, awards or verdicts for noneconomic damages are limited to \$650,000 for health care malpractice causes of action arising between January 1, 2005 and December 31, 2008, with annual limit increases of \$15,000 for each year beginning on January 1, 2009. Current law states that this limitation applies *in the aggregate* to all claims for personal injury and wrongful death arising from the same medical injury, *regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants*. The bill amends the statute to state that for such causes of action arising on or after January 1, 2009, the limitation applies *in a cause of action to each direct victim of tortious conduct and all persons who claim injury by or through that victim (i.e., the limitation on noneconomic damages applies separately to a survival*

action by the estate of the deceased and to a wrongful death action by the beneficiaries of the deceased person).

Under current law, if there is a wrongful death action in which there are two or more claimants or beneficiaries, whether or not there is a personal injury action arising from the same medical injury, the total amount awarded for noneconomic damages for all actions may not exceed 125% of the limitation for health care malpractice claims as set forth by the statute and stated above, *regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants*. The bill amends the statute to state that for such causes of action arising on or after January 1, 2009, an award for noneconomic damages may not exceed 150% of the statutory limitation, *regardless of the number of claimants or beneficiaries who share in the award*.

Background: In health care malpractice actions, noneconomic damages include payment for pain, suffering, and disfigurement. Economic damages, on the other hand, include payment for loss of earnings and medical expenses, and are not limited to a maximum amount. Studies by the federal General Accounting Office have indicated that recent sharp increases in medical malpractice insurance rates are due in part to insurer losses on medical malpractice claims. Other contributing factors include decreased investment income, artificially low premium rates adopted while insurers competed for market share during boom years, and higher overall costs due largely to increased reinsurance rates for medical malpractice insurers.

In 2004 and 2005, the General Assembly enacted legislation in response to increasing concern that medical malpractice insurance had become unaffordable for individuals practicing in certain high-risk specialties such as emergency surgery, obstetrics, neurosurgery, and orthopedic surgery. One provision of the legislation placed a 4-year moratorium on the annual increase of \$15,000 in the cap on noneconomic damages for medical malpractice awards.

Small Business Effect: The bill's provisions narrow the applicability of the noneconomic damages limit and increase the limit for wrongful death actions with multiple beneficiaries. To the extent that these provisions indirectly contribute to higher medical malpractice premiums, small business health care providers could be negatively impacted.

Additional Comments: Individuals who are awarded noneconomic damages in health care malpractice actions could be positively impacted by the bill's provisions narrowing the applicability of the damages limit and increasing the limit for wrongful death actions with multiple beneficiaries.

Additional Information

Prior Introductions: None.

Cross File: HB 969 (Delegates Waldstreicher and Valderrama) – Judiciary.

Information Source(s): Department of Legislative Services

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mll/jr

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