

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 606
Judiciary

(Delegate Kelly, *et al.*)

Health Care Liability - Noneconomic Damages

This bill repeals current law that reinstates, beginning January 1, 2009, a \$15,000 annual increase in the maximum amount of noneconomic damages that may be awarded in a health care malpractice claim.

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 meaningful.

Analysis

Current Law: Statute provides that an award for noneconomic damages in a health care malpractice cause of action arising between January 1, 2005, and December 31, 2008 may not exceed \$650,000. It also provides that the limitation on noneconomic damages in such cases shall increase by \$15,000 on January 1 of each year beginning January 1, 2009. The increased amount applies to causes of action arising between January 1 and December 31 of that year, inclusively.

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

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 years in which the market is favorable, and higher overall costs due largely to increased reinsurance rates for medical malpractice insurers.

In 2004 and 2005, legislation was enacted 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 four-year moratorium on the annual increase of \$15,000 in the cap on noneconomic damages for medical malpractice awards.

Small Business Effect: To the extent that a lower noneconomic damages limit in future years indirectly contributes to lower medical malpractice premiums, small business health care providers could be positively impacted.

Additional Comments: Individuals who are awarded noneconomic damages in health care malpractice actions could be negatively impacted by the bill's lower limit in future years.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 3, 2008
ncs/jr

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