

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 622
Judiciary

(Delegate Waldstreicher, *et al.*)

Health Care Malpractice - Noneconomic Damages

This bill increases the maximum amount of noneconomic damages allowable for personal injury actions and wrongful death actions concerning health care malpractice.

Fiscal Summary

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

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

Small Business Effect: Potential minimal.

Analysis

Bill Summary: An award or a verdict for noneconomic damages for a cause of action arising between January 1, 2010, and September 30, 2010, inclusive, may not exceed the current limit of \$680,000. In 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 above, regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

The limitation on an award or verdict for noneconomic damages for personal injury or wrongful death for a cause of action arising on or after October 1, 2010, is increased to \$740,000, and increases \$15,000 each year beginning October 1, 2011. This limitation applies in a personal injury action to each direct victim of tortious conduct and all persons claiming injury by or through that victim. In a wrongful death action arising on or after October 1, 2010, with two or more claimants or beneficiaries, an award or verdict

for noneconomic damages may not exceed 150% of the statutory limitation, regardless of the number of claimants or beneficiaries who share in the award or verdict.

Current Law: An award or verdict for noneconomic damages is limited to \$650,000 for health care malpractice causes of action arising between January 1, 2005 and December 31, 2008, with annual increases of \$15,000 for each year beginning on January 1, 2009. The increased amount applies to causes of action arising between January 1 and December 31 of that year, inclusive. 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. In a wrongful death action with two or more claimants or beneficiaries, whether or not there is a personal injury action arising from the same injury, the total noneconomic damage award may not exceed 125% of the statutory limitation for health care malpractice claims, regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

Background: In health care malpractice actions, noneconomic damages include payment for pain, suffering, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury. 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 U.S. Government Accountability Office indicated that sharp increases in medical malpractice insurance rates in the early 2000s were due in part to insurer losses on medical malpractice claims. Other contributing factors included 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 adopted 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 four-year moratorium on the annual increase of \$15,000 in the cap on noneconomic damages for medical malpractice awards. Another provision decreased the percentage limitation in wrongful death cases from 150% to 125% and broadened the scope of the limitation. The bill restores the “cap” on noneconomic damages in health care malpractice cases to what it would have been if the 2004 changes had not been enacted and makes it parallel to the cap for all other personal injury and wrongful death cases.

The 2008 Report on the Availability and Affordability of Health Care Medical Professional Liability Insurance in Maryland issued by the Maryland Insurance

Administration in September 2008 stated that medical professional liability insurance remains available in Maryland and is more affordable for physicians today than it was in 2004.

Three recent court cases have sought to overturn State limits on noneconomic damages. In *Green v. N.B.S., Inc.*, the Court of Appeals of Maryland (Court) held that the statutory cap on noneconomic damages applies to personal injury claims authorized by the Consumer Protection Act. (See, 409 Md. 528 (2009).) In a reported opinion on January 12, 2010, the Court upheld the statutory cap in *Lockshin v. Semsker*. In *Lockshin*, the Court held that the statutory cap on noneconomic damages applies to all health care medical malpractice claims, including those for which arbitration has been waived. (See Court of Appeals of Maryland, No. 78, September Term, 2009.) In March 2010, the Court will hear arguments on the constitutionality of an award limit on noneconomic damages in a general liability case in *Freed v. D.R.D. Pool Service, Inc.*

Additional Information

Prior Introductions: Identical bills were introduced in the 2008 and 2009 sessions. HB 237 of 2009 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 505 of 2009, received an unfavorable report from the Senate Judicial Proceedings Committee. HB 969 and SB 550 of 2008 received hearings in the House Judiciary Committee and Senate Judicial Proceedings Committee, respectively, but no further action was taken by either committee.

Cross File: SB 769 (Senator Gladden) – Judicial Proceedings.

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

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