

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 1157  
Judiciary

(Delegate Elliott, *et al.*)

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Health Care Malpractice - Limitation on Noneconomic Damages

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This bill limits the noneconomic damages awarded for a health care malpractice claim to \$500,000 for a cause of action arising on or after October 1, 2010. The bill increases the statutory limit on noneconomic damages by \$15,000 annually beginning October 1, 2011, for a cause of action arising between October 1 of that year and September 30 of the following year.

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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:** Minimal.

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Analysis

**Bill Summary:** An award or a verdict for noneconomic damages for a cause of action arising between January 1, 2009 and December 31, 2009, inclusive, may not exceed \$665,000. Likewise, 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.

**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 *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.*

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 8, 2010  
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