

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 817
Judiciary

(Delegate McComas, *et al.*)

Health Care Malpractice - Limitation on Noneconomic Damages

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, 2015.

Fiscal Summary

State Effect: General fund revenues likely decrease minimally due to the 2% tax collected on premiums paid in the State. Expenditures are not affected.

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

Small Business Effect: Potential meaningful for physicians whose premiums for medical malpractice insurance may decrease and for small law firms whose recoveries decrease due to the lower limitation on damages.

Analysis

Bill Summary: An award for noneconomic damages in a health care malpractice action for personal injury or wrongful death is capped at the current law level of \$755,000 for a cause of action arising between January 1, 2015, and September 30, 2015. However, for any health care malpractice cause of action arising on or after October 1, 2015 (the bill's effective date), an award for noneconomic damages may not exceed \$500,000.

Current Law: The Courts and Judicial Proceedings Article sets various caps on noneconomic damages in civil actions depending on the type of action and when the cause of action arose. These caps generally increase by \$15,000 a year. In an action for damages for personal injury or death (excluding medical malpractice), the cap is \$800,000 for causes of action arising on or after October 1, 2014, but the cap increases to \$815,000 for causes of action arising on or after October 1, 2015. This limitation applies in a personal injury

action to each direct victim of tortious conduct and all persons who claim injury through that victim. In a wrongful death action in which there are two or more claimants or beneficiaries, an award of noneconomic damages may not exceed 150% of the applicable cap, regardless of the number of claimants or beneficiaries. The cap applies separately to a wrongful death claim and a survival action.

For medical malpractice actions, the cap was frozen at \$650,000 for causes of action arising between January 1, 2005, and December 31, 2008, increasing by \$15,000 each year beginning on January 1, 2009. For causes of action arising in 2015, the cap is \$755,000. The cap 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. However, if there is a wrongful death action in which there are two or more claimants or beneficiaries, the total amount awarded may not exceed 125% of the cap, or \$943,750 in 2015.

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 three-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. Maryland courts consistently uphold the constitutionality of caps on noneconomic damages

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 was still available in Maryland and was more affordable for physicians in 2008 than it was in 2004.

Additional Information

Prior Introductions: HB 930 of 2014 received an unfavorable report from the House Judiciary Committee. HB 1157 of 2010, a similar bill, also received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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

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