

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 398
Judiciary

(Delegate Carter, *et al.*)

Civil Actions - Noneconomic Damages - Catastrophic Injury

This bill increases the maximum amount of noneconomic damages that may be recovered in health care malpractice and other civil actions for a catastrophic injury, as defined in the bill.

Fiscal Summary

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

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

Small Business Effect: Potential meaningful. Health care providers and health care practices are subject to higher liability under the increased cap for catastrophic injury.

Analysis

Bill Summary: The existing limit on noneconomic damages in medical malpractice actions does not apply to an award from an arbitration panel, or a verdict by a judge or jury on judicial review of an arbitration award, for a cause of action arising on or after October 1, 2015, in which a court in a posttrial motion or a health claims arbitration panel determines that a health care provider's negligence or other wrongful conduct caused a catastrophic injury.

A "catastrophic injury" means death or permanent impairment constituted by one of the listed symptoms: (1) spinal cord injury associated with severe paralysis of an appendage or the trunk or with incontinence; (2) amputation and loss of effective use of an appendage;

(3) severe brain injury; (4) blindness; (5) loss of reproductive organs that leaves a person sterile; or (6) major burns.

If a court in a posttrial motion in any civil action for personal injury or wrongful death or a health claims arbitration panel in a medical malpractice claim determines that the defendant's negligence or other wrongful conduct caused at least one catastrophic injury, the limitation on noneconomic damages is tripled.

Current Law: Current law does not provide a separate limit on noneconomic damages for catastrophic injury. 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. In an action for damages for personal injury or death (excluding medical malpractice), the cap is \$815,000 for causes of action arising between October 1, 2015, and October 1, 2016. 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.

Small Business Effect: For cases in which a court or a health claims arbitration panel determines that a catastrophic injury was caused by a health care provider's negligent or wrongful conduct, the bill applies the cap for noneconomic damages for personal injury or wrongful death in general liability actions (rather than the cap in medical malpractice actions) and triples the cap. This means that the cap under the bill would be more than \$2.4 million in 2015, and the limit for a wrongful death action in which there are two or more claimants or beneficiaries would be 150% of that amount, or approximately \$3.7 million. In cases with claims for both personal injury and wrongful death, the aggregated cap would be approximately \$6.1 million. These caps apply to all catastrophic injury claims determined to be caused by the defendant's negligence or wrongful conduct, including general tort liability claims.

Additional Information

Prior Introductions: HB 1009 of 2014, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 789 of 2014 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None designated; however, SB 479 (Senator Ramirez, *et al.* – Judicial Proceedings) is identical.

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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Analysis by: Sasika Subramaniam

Direct Inquiries to:
(410) 946-5510
(301) 970-5510