

SENATE BILL 784

D3

9lr2338
CF 9lr3123

By: **Senator West**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Health Care Malpractice Claims**
3 **(Life Care Act 2019)**

4 FOR the purpose of requiring a certain award or verdict for future medical expenses to be
5 based on a certain average national reimbursement rate for a certain locality except
6 under certain circumstances; requiring a certain award or verdict for future medical
7 expenses for hospital facility services to be based on certain rates; requiring a certain
8 award or verdict for future medical expenses for nursing facility services to be based
9 on a certain rate; requiring a certain award or verdict for certain future medical
10 expenses for which there is not a certain reimbursement rate to be based on a certain
11 cost; requiring future medical expenses to be adjusted for inflation by a certain index;
12 requiring a certain adjustment for inflation to be based on the average rate of
13 inflation for a certain amount of years preceding an award or verdict; authorizing a
14 certain expert witness to testify at trial in a health care malpractice case, under
15 certain circumstances; and generally relating to health care malpractice claims.

16 BY repealing and reenacting, with amendments,
17 Article – Courts and Judicial Proceedings
18 Section 3–2A–09
19 Annotated Code of Maryland
20 (2013 Replacement Volume and 2018 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
22 That the Laws of Maryland read as follows:

23 **Article – Courts and Judicial Proceedings**

24 3–2A–09.

25 (a) This section applies to an award under § 3–2A–05 of this subtitle or a verdict
26 under § 3–2A–06 of this subtitle for a cause of action arising on or after January 1, 2005.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) (1) (i) Except as provided in paragraph (2)(ii) of this subsection, an
2 award or verdict under this subtitle for noneconomic damages for a cause of action arising
3 between January 1, 2005, and December 31, 2008, inclusive, may not exceed \$650,000.

4 (ii) The limitation on noneconomic damages provided under
5 subparagraph (i) of this paragraph shall increase by \$15,000 on January 1 of each year
6 beginning January 1, 2009. The increased amount shall apply to causes of action arising
7 between January 1 and December 31 of that year, inclusive.

8 (2) (i) Except as provided in subparagraph (ii) of this paragraph, the
9 limitation under paragraph (1) of this subsection shall apply in the aggregate to all claims
10 for personal injury and wrongful death arising from the same medical injury, regardless of
11 the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

12 (ii) If there is a wrongful death action in which there are two or more
13 claimants or beneficiaries, whether or not there is a personal injury action arising from the
14 same medical injury, the total amount awarded for noneconomic damages for all actions
15 may not exceed 125% of the limitation established under paragraph (1) of this subsection,
16 regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

17 (c) (1) In a jury trial, the jury may not be informed of the limitation under
18 subsection (b) of this section.

19 (2) If the jury awards an amount for noneconomic damages that exceeds
20 the limitation established under subsection (b) of this section, the court shall reduce the
21 amount to conform to the limitation.

22 (3) In a wrongful death action in which there are two or more claimants or
23 beneficiaries, if the jury awards an amount for noneconomic damages that exceeds the
24 limitation under subsection (b) of this section or a reduction under paragraph (4) of this
25 subsection, the court shall:

26 (i) If the amount of noneconomic damages for the primary
27 claimants, as described under § 3-904(d) of this title, equals or exceeds the limitation under
28 subsection (b) of this section or a reduction under paragraph (4) of this subsection:

29 1. Reduce each individual award of a primary claimant
30 proportionately to the total award of all primary claimants so that the total award to all
31 claimants or beneficiaries conforms to the limitation or reduction; and

32 2. Reduce each award, if any, to a secondary claimant as
33 described under § 3-904(e) of this title to zero dollars; or

34 (ii) If the amount of noneconomic damages for the primary claimants
35 does not exceed the limitation under subsection (b) of this section or a reduction under
36 paragraph (4) of this subsection or if there is no award to a primary claimant:

1 1. Enter an award to each primary claimant, if any, as
2 directed by the verdict; and

3 2. Reduce each individual award of a secondary claimant
4 proportionately to the total award of all of the secondary claimants so that the total award
5 to all claimants or beneficiaries conforms to the limitation or reduction.

6 (4) In a case in which there is a personal injury action and a wrongful death
7 action, if the total amount awarded by the jury for noneconomic damages for both actions
8 exceeds the limitation under subsection (b) of this section, the court shall reduce the award
9 in each action proportionately so that the total award for noneconomic damages for both
10 actions conforms to the limitation.

11 (d) (1) A verdict for past medical expenses shall be limited to:

12 (i) The total amount of past medical expenses paid by or on behalf
13 of the plaintiff; and

14 (ii) The total amount of past medical expenses incurred but not paid
15 by or on behalf of the plaintiff for which the plaintiff or another person on behalf of the
16 plaintiff is obligated to pay.

17 (2) (i) A court may on its own motion, or on motion of a party, employ a
18 neutral expert witness to testify on the issue of a plaintiff's future medical expenses or
19 future loss of earnings.

20 (ii) Unless otherwise agreed to by the parties, the costs of a neutral
21 expert witness shall be divided equally among the parties.

22 (iii) Nothing contained in this subsection limits the authority of a
23 court concerning a court's witness.

24 **(E) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, AN**
25 **AWARD OR A VERDICT FOR FUTURE MEDICAL EXPENSES SHALL BE BASED SOLELY**
26 **ON AVERAGE NATIONAL MEDICARE REIMBURSEMENT RATES IN EFFECT ON THE**
27 **DATE OF THE AWARD OR VERDICT FOR THE LOCALITY IN WHICH THE CARE IS TO BE**
28 **PROVIDED, ADJUSTED FOR INFLATION AS PROVIDED IN PARAGRAPH (5) OF THIS**
29 **SUBSECTION.**

30 **(2) IF ON THE DATE OF THE AWARD OR VERDICT AN ALL-PAYER**
31 **MODEL CONTRACT IS IN EFFECT, AN AWARD OR A VERDICT FOR FUTURE MEDICAL**
32 **EXPENSES FOR HOSPITAL FACILITY SERVICES SHALL BE BASED SOLELY ON THE**
33 **RATES APPROVED BY THE HEALTH SERVICES COST REVIEW COMMISSION IN**
34 **EFFECT ON THE DATE OF THE AWARD OR VERDICT FOR THE HOSPITAL FACILITY IN**
35 **WHICH SERVICES ARE TO BE PROVIDED, ADJUSTED FOR INFLATION AS PROVIDED IN**

1 PARAGRAPH (5) OF THIS SUBSECTION.

2 (3) AN AWARD OR A VERDICT FOR FUTURE MEDICAL EXPENSES FOR
3 NURSING FACILITY SERVICES SHALL BE BASED SOLELY ON THE STATEWIDE
4 AVERAGE PAYMENT RATE FOR THE MARYLAND MEDICAL ASSISTANCE PROGRAM
5 DETERMINED BY THE MARYLAND DEPARTMENT OF HEALTH IN EFFECT ON THE
6 DATE OF THE AWARD OR VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN
7 PARAGRAPH (5) OF THIS SUBSECTION.

8 (4) AN AWARD OR A VERDICT FOR FUTURE MEDICAL EXPENSES FOR
9 WHICH THERE IS NO MEDICARE REIMBURSEMENT RATE, HOSPITAL FACILITY RATE,
10 OR STATEWIDE AVERAGE PAYMENT SHALL BE BASED ON ACTUAL COST ON THE DATE
11 OF THE AWARD OR VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN
12 PARAGRAPH (5) OF THIS SUBSECTION.

13 (5) (I) FUTURE MEDICAL EXPENSES SHALL BE ADJUSTED FOR
14 INFLATION FOR THE EXPENDITURE CATEGORY OF THE CONSUMER PRICE INDEX TO
15 WHICH THE EXPENSE APPLIES.

16 (II) THE ADJUSTMENT FOR INFLATION IN THIS PARAGRAPH
17 SHALL BE BASED ON THE AVERAGE RATE OF INFLATION FOR THE 5 YEARS
18 PRECEDING THE AWARD OR VERDICT.

19 (F) IF SCIENTIFIC, TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE WILL
20 ASSIST THE TRIER OF FACT TO UNDERSTAND THE EVIDENCE OR TO DETERMINE A
21 FACT IN ISSUE, A WITNESS QUALIFIED AS AN EXPERT BY KNOWLEDGE, SKILL,
22 EXPERIENCE, TRAINING, OR EDUCATION MAY TESTIFY IN THE FORM OF AN OPINION
23 OR OTHERWISE IF:

24 (1) THE TESTIMONY IS BASED ON SUFFICIENT FACTS OR DATA;

25 (2) THE TESTIMONY IS THE PRODUCT OF RELIABLE PRINCIPLES AND
26 METHODS; AND

27 (3) THE WITNESS HAS APPLIED THE PRINCIPLES AND METHODS
28 RELIABLY TO THE FACTS OF THE CASE THAT HAVE BEEN OR WILL BE ADMITTED INTO
29 EVIDENCE BEFORE THE TRIER OF FACT.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2019.