

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 784

(Senator West)

Judicial Proceedings

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Civil Actions - Health Care Malpractice Claims (Life Care Act 2019)

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The bill (1) specifies the method by which an award or a verdict for future medical expenses must be calculated and (2) authorizes a specified witness to testify in the form of an opinion or otherwise, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.

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Fiscal Summary

**State Effect:** The bill is not anticipated to affect State finances or operations.

**Local Effect:** The bill is not anticipated to affect local government finances or operations.

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:**

*Calculation of an Award or Verdict for Future Medical Expenses*

Generally, an award or a verdict for future medical expenses must be based solely on average national Medicare reimbursement rates in effect on the date of the award or verdict for the locality in which the care is to be provided, adjusted for inflation. However, an award or verdict for future medical expenses must be:

- for hospital facility services, if an all-payer model contract is in effect in the State on the date of the award or verdict, based solely on the rates approved by the Health

Services Cost Review Commission in effect on the date of the award or verdict for the hospital facility in which services are to be provided, adjusted for inflation;

- for nursing facility services, based solely on the statewide average payment rate for Maryland Medicaid determined by the Maryland Department of Health in effect on the date of the award or verdict, adjusted for inflation; or
- for future medical expenses for which there is no Medicare reimbursement rate, hospital facility rate, or statewide average payment, based on actual cost on the date of the award or verdict, adjusted for inflation.

### *Inflation*

Future medical expenses must be adjusted for inflation for the expenditure category of the consumer price index to which the expense applies, based on the average rate of inflation for the five years preceding the award or verdict.

### *Witnesses*

A witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case that have been or will be admitted into evidence before the trier of fact.

### **Current Law/Background:**

#### *Limitation of Noneconomic Damages*

For health care malpractice actions, the cap for noneconomic damages was set 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. Thus, an award or verdict in a health care malpractice claim for a cause of action arising in 2019 is capped at \$815,000. 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, for 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 \$1,018,750 in 2019.

### *Reduction of Noneconomic Damages*

In a case in which there is a personal injury action and a wrongful death action, if the total amount awarded by the jury for noneconomic damages for both actions exceeds the limitation, the court must reduce the award in each action proportionately so that the total award for noneconomic damages for both actions conforms to the limitation.

### *Reduction of Awards over Limit in Jury Trials*

In a jury trial, the jury may not be informed of the limitation on noneconomic damages. If the jury awards an amount for noneconomic damages that exceeds the limitation, the court must reduce the amount to conform to the limitation. In a wrongful death action in which there are two or more claimants or beneficiaries, if the jury awards an amount for noneconomic damages that exceeds the limitation or reduction, the court must:

- if the amount of noneconomic damages for the primary claimants equals or exceeds the limitation or reduction, (1) reduce each individual award of a primary claimant proportionately to the total award of all primary claimants so that the total award to all claimants or beneficiaries conforms to the limitation or reduction and (2) reduce each award, if any, to a secondary claimant to zero dollars; or
- if the amount of noneconomic damages for the primary claimants does not exceed the limitation or reduction, or if there is no award to a primary claimant, (1) enter an award to each primary claimant, if any, as directed by the verdict and (2) reduce each individual award of a secondary claimant proportionately to the total award of all of the secondary claimants so that the total award to all claimants or beneficiaries conforms to the limitation or reduction.

### *Medical Expenses and Loss of Earnings*

A verdict for past medical expenses must be limited to (1) the total amount of past medical expenses paid by or on behalf of the plaintiff and (2) the total amount of past medical expenses incurred but not paid by or on behalf of the plaintiff for which the plaintiff or another person on behalf of the plaintiff is obligated to pay.

A court may on its own motion, or on motion of a party, employ a neutral expert witness to testify on the issue of a plaintiff's future medical expenses or future loss of earnings. Unless otherwise agreed to by the parties, the costs of a neutral expert witness must be divided equally among the parties.

**Small Business Effect:** The specified method of calculating an award or a verdict for future medical expenses may increase or decrease the total award or a verdict in a health care malpractice claim, based on additional unknown factors.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1323 (Delegate Rosenberg) - Rules and Executive Nominations.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Health; Maryland Health Care Alternative Dispute Resolution Office; Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2019  
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