

**House Bill 1037 – Civil Actions – Noneconomic Damages – Personal Injury
Or Wrongful Death
Before the House Judiciary Committee
February 26, 2020**

Position: Oppose

The University of Maryland Medical System opposes House Bill 1037, Civil Actions – Noneconomic Damages - Personal Injury or Wrongful Death, and urges this Committee to cast an unfavorable vote.

Noneconomic damages are not measurable

As distinguished from the calculable, economic damages (e.g., past and future medical expenses, loss of past and future earnings, or the loss of employment or business opportunities), noneconomic damages are awarded for pain and suffering, emotional distress, loss of consortium and other intangible injuries. They have no direct, calculable economic basis and there is no method to accurately assign monetary value. Compounded by the fact that medical cases often involve complex issues, complex expert testimony, and specialized terms uncommon to a lay juror, jury awards for noneconomic damages are often erratic and excessive, amounting essentially to punitive damages.

House Bill 1037 eliminates any statutory limitation on noneconomic damages for personal injury or wrongful death cases in circumstances which are ambiguous and unclear

Acknowledging the erratic nature of these damages, and the fact that medical malpractice payouts have a direct effect on medical malpractice premiums, the Maryland legislature first enacted a cap on noneconomic damages in 1974; that cap was revised in 2006. Notably, Maryland has continued to allow for a full recovery of all economic damages proven by a plaintiff, but has appropriately limited available recovery of non-economic damages in medical malpractice cases. This bill would eliminate the current cap on non-economic damages in any claim or action for damages for personal injury or wrongful death arising on or after October 1, 2020, if the “damages resulted from one or more willful, wanton, malicious, reckless, or grossly negligent acts or omissions,” making way for the potentially exorbitant jury awards with no measurable basis. In addition, the circumstances under which the non-economic cap would be eliminated are vague, ambiguous, and undefined, and open the door for a jury to assess a punitive award of damages where such would not be appropriate or intended.

House Bill 1037 would adversely affect Maryland hospitals and physicians.

A. *Adverse Effect on Hospitals*

In order to fully understand the effect a bill eliminating non-economic damages caps may have on health care in Maryland if passed, it is important to understand how hospitals currently secure

medical malpractice insurance coverage: that is, the hospitals within the University System (like many hospitals in Maryland) self-fund their insurance programs rather than purchasing insurance from the commercial market. The cost of this self- insurance is determined, on an annual basis, by actuaries. An actuary calculates a hospital's past losses and uses those losses to predict the cost of future losses. As such, the greater the losses a hospital incurs, the more dollars the hospital must take out of its operating budget to set aside for future potential medical malpractice payments.

Upon passage of this bill, the amount that hospitals would need to set aside for potentially limitless, future non-economic damage awards under ambiguous circumstances would have no appreciable bounds. These are real dollars that would not be available for the benefit of patients, could not be used in support of patient care, could not be used in support of research and could not be used to expand the health care services in or outside of the hospital to aid Maryland's citizens. Despite what many believe, hospitals operate on limited, tight margins –which are restricted even further by the total cost of care model. To expect hospitals to absorb unlimited, non-economic damages without an overwhelmingly negative impact on the already fragile, financial condition of the industry, is unrealistic.

B. Adverse Effect on Physicians

In an attempt to transfer some of the increased liability burden incurred as a result of this legislation, hospitals may well find themselves in the position of requiring physicians to purchase multiple times the insurance coverage they are currently required to maintain under the hospital's bylaws. Instead of requiring \$1 million in medical malpractice coverage, hospitals would, of necessity, have to increase that requirement to \$2, \$3, \$5 million dollars, or more. This would have a significant impact on the cost of medical malpractice insurance to physicians and thus would negatively affect Maryland citizen's access to healthcare.

HB 1037 is the wrong way to address perceived problems with the liability system.

In the event of an adverse medical outcome, patients want hospitals to insure that another patient will never experience the outcome they experienced. They do not contend that giving them more money would in some way lessen the emotional impact of a medical injury/death. To the contrary, patients' interests rest in seeking additional investments in patient safety and quality and to invest in programs that will promote best practices and positive patient outcomes. These programs require funding that – should this bill become law – would not be available for hospitals to use to implement and/or continue said programs. There are limited financial resources available to hospitals, and opening the floodgates to damages with no measurable construct under undefined, ambiguous circumstances will come at the expense of patient care.

For these reasons, the University of Maryland Medical System urges an unfavorable vote on HB 1037.

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