



# State Legislative Update

## March 2020

### Medical liability reform efforts at the state level

A summary of recent developments that highlight the work being done to safeguard access to health care for patients and reduce medical lawsuit abuse

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#### California | Ballot initiative

A challenge to MICRA is taking shape through a ballot initiative, the *Fairness for Injured Patients Act*. Among other provisions, the initiative would eliminate the \$250,000 cap on non-economic damages by adjusting the cap for inflation since its enactment; effectively raising the cap to \$1.2 million. The measure would also allow judges or juries to remove the cap for cases of death or permanent disability.

#### Georgia | S.B. 415

This proposed, broad tort reform bill, currently tabled by the Senate, includes a number of provisions important to physicians, including language eliminating phantom damages and streamlining the process for physicians and small businesses that are involved in a lawsuit.

#### Iowa | S.S.B. 3150, S.S.B. 3085, H.S.B. 596; S.F. 2338

S.S.B. 3150, S.S.B. 3085 and H.S.B. 596 were bills directing the study of eliminating exceptions to the current cap, thereby enacting a hard limit of \$250,000 on non-economic damages. S.F. 2388, legislation based on S.S.B. 3150 and now under consideration by the House Commerce Committee after passing the Senate, would increase Iowa's cap on noneconomic damages to \$750,000 but eliminate exceptions. It would require that evidence of past medical expenses must be limited to evidence of the amounts actually paid to satisfy medical bills and evidence of amounts necessary to satisfy medical bills that have not been paid. The bill also eliminates phantom damages.

#### Kansas | S.B. 446

S.B. 446, referred to the Senate Judiciary Committee, would limit attorney's fees to an amount equal to a percentage of the net amount recovered as follows: (1) 33 1/3% of the first \$300,000; (2) 25% of the next \$300,000; (3) 20% of the next \$300,000; (4) 15% of the next \$300,000; and (5) 10% of any amount that exceeds \$1,200,000.

#### Louisiana | H.B. 287

The bill currently under consideration by the Committee on Civil Law and Procedure would implement collateral source reform and phantom damage reform. It would mandate that reductions in medical bills based upon the write-offs or write-downs by any health insurer are not collateral sources and are not recoverable as damages in civil litigation. In cases where a plaintiff's medical expenses have been paid by health insurance, the plaintiff's recovery of medical expenses would be limited to the amount actually paid to the healthcare provider by

the health insurer and not the amount billed. If a plaintiff does not submit medical bills to an available health insurer for payment, plaintiff's recovery is limited to the amount that would have been paid by the health insurer had the medical bills been submitted to the health insurer for payment.

### **Maryland | H.B. 1037; S.B. 187**

H.B. 1037, pending in the House Judiciary Committee after a hearing in February, would eliminate limits on noneconomic damages awarded for claims of wrongful death or personal injury arising on or after October 1, 2020, if found that the defendant's actions were a result of one or more willful, wanton, malicious, reckless or grossly negligent acts or omissions.

S.B. 187, a comprehensive liability reform bill with the Senate Judicial Proceedings Committee, would require an expert witness testifying under certain circumstances to meet certain qualifications. Also, in cases involving a contingency fee, the bill would mandate that an injured plaintiff be awarded a certain percentage of any award and the plaintiff's attorney receive payment for court costs and witness fees. An injured patient would be prohibited from waiving contingency fee limits. A hearing was held on the bill in late January.

### **Missouri | H.B. 2384**

In assessing damages for past or future medical care or treatment, damages shall be limited to the actual cost of the medical care or treatment for medical care or treatment that is necessary and a proximate result of the negligence or fault of the adverse party. H.B. 2384 has been introduced, but no actions taken or hearings held.

### **New Jersey | A. 1013, S. 780; A. 2979**

Companion bills A. 1013 and S. 780, referred to their respective Judiciary Committees, would expand wrongful death damages to include non-economic claims of mental anguish, emotional pain and suffering, loss of society and loss of companionship.

A. 2979, the *Addiction Medicine Philanthropy Act* extends to those physicians who provide uncompensated care for treatment of SUDS a \$250,000 limit on non-economic damages in claims of medical negligence. The bill is with the Assembly Health Committee for consideration.

### **Oklahoma | S.J.R. 50**

A ballot initiative is under consideration in Oklahoma, to amend the state constitution to reinstitute reasonable limits on non-economic damages that were declared unconstitutional by the Oklahoma Supreme Court in 2019. The Joint Resolution must first pass the legislature, and then will go before voters.

### **West Virginia | S.B. 599; H.B. 2725**

S.B. 599, with the Judiciary Committee, clarifies existing language regarding when a claimant may file a cause of action without a screening certificate of merit. The bill strikes what was considered the subjective word of "believes" and inserts in its place the objective word "asserts."

H.B. 2725, with the House Judiciary Committee, prevents compensatory damage awards for medical expenses that the claimant has not and will not pay for medical care or treatment.