

Assembly Bill 35 Summary: How the agreement updates MICRA

Non-Economic Damages

The current MICRA law limits recovery of non-economic damages to \$250,000, regardless of the number of defendants.

The most central provision of the agreement would change the limits on noneconomic damages to:

- Cases not involving a patient death: \$350,000 starting Jan. 1, 2023, with an incremental increase over the next 10 years to \$750,000.
- Cases involving a patient death: \$500,000 starting Jan. 1, 2023, with an incremental increase over the next 10 years to \$1 million.
- After 10 years, an annual 2% adjustment would apply to the limits.
- These new limits would only apply to cases filed Jan. 1, 2023, or later; they would not apply retroactively.

The proposal will also create three separate categories for a total of three possible caps in each case. A health care provider or health care institution can only be held liable for damages under one category regardless of how the categories are applied or combined. The new categories include:

- One cap for health care providers (regardless of the number of providers or causes of action)
- One cap for health care institutions (regardless of the number of providers or causes of action)
- One cap for unaffiliated health care institutions or providers at that institution that commit a separate and independent negligent act

Additional MICRA Changes

In addition to changes to the cap on non-economic damages, the proposal will make adjustments to periodic payments and limits on attorney contingency fees and will establish a new statute that ensures protections for benevolent gestures and statements of fault by health care providers.

- Periodic Payment of Future Economic Damages: at the request of either party, periodic payments can be utilized for future economic damages starting at \$250,000 (presently at \$50,000)
- Limits on Attorney Contingency Fees: creates a two-tiered system (from a four-tiered) with the option to petition courts for a higher contingency fee for cases that go to trial
- 25% contingency fee limit for claims resolved PRIOR to civil complaint being filed or arbitration demand being made
- 33% contingency fee limit for claims resolved AFTER civil complaint is filed or arbitration demand is made
- Attorney fees will come out of any recovery, rather than above that like this year's ballot measure proposed.

- Protections for Benevolent Gestures and Statements of Fault by Health Care Providers:
Establishes new discovery and evidentiary protections for all pre-litigation expressions of sympathy, regret, or benevolence, including statements of fault, by a health care provider to an injured patient or their family in relation to the pain, suffering, or death of a person or an adverse patient safety event or unexpected medical outcome.