



Maryland
Hospital Association

Senate Bill 813 – Personal Injury or Wrongful Death – Noneconomic Damages
Position: Oppose

Bill Summary

SB 813 repeals the limitation on noneconomic damages for health care malpractice actions that arise on or after October 1, 2019. The bill would increase limitations on non-economic damages in an action for wrongful death in which there are two or more claimants or beneficiaries and applies certain limitations on non-economic damages in an action for personal injury or wrongful death to a health care malpractice action that arises on or after October 1, 2019.

MHA Position

Maryland's hospitals oppose efforts that would make the state's highly litigious environment even more volatile. SB 813 would needlessly raise the cost of health care and make it difficult to attract and retain the doctors necessary to continue to provide the highest quality care. A plaintiff in Maryland is currently able to seek non-economic and economic damages. Non-economic damages include pain and suffering and are capped at \$815,000. This cap, however, is among the highest in the country and escalates each year by \$15,000 in perpetuity. Compensation for economic damages, which include lost wages and future medical care, is unlimited.

A recent survey found that in 2018, annual hospital payouts (closed claims) were \$176 million — nearly 140 percent higher than in 2008 — despite the frequency of claims remaining relatively stable.¹ This large increase in payouts is a result of record economic damages being awarded, which directly benefits plaintiff attorneys, who receive up to 40 percent in contingency fees. SB 813 would effectively continue to grow this trend, offering a means for attorneys to receive more fees, while increasing malpractice insurance rates and increasing overall health care costs for everyone.

To avoid costly litigation, doctors, and other providers have resorted to using defensive medicine — the overuse of tests and procedures to protect themselves from potential lawsuits. The use of defensive medicine makes up 13 percent of all hospital costs, translating into an additional \$2 billion in unnecessary health care spending in Maryland. As a result, this unnecessary inflation in health care costs threatens the ability for hospitals and other providers to succeed under the aggressive cost saving targets of the Total Cost of Care Model, which went into effect on January 1, 2019. If the waiver is lost due to failure to meet these fiscal limits, Maryland stands to lose an estimated \$2 billion each year in federal funding.

For these reasons, we urge you to give SB 813 an *unfavorable* report.

¹ MHA Medical Liability Survey (2018), includes medical liability claims by service type representing about 90 percent of Maryland's hospitals and includes claims from 2004 – 2018.