

MedChi

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TO: The Honorable Joseph F. Vallario, Jr., Chair
Members, House Judiciary Committee
The Honorable Jill P. Carter

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer
J. Steven Wise

DATE: March 2, 2016

RE: **OPPOSE** – House Bill 869 – *Civil Actions – Noneconomic Damages – Catastrophic Injury*

The Maryland State Medical Society (MedChi), which represents more than 7,600 Maryland physicians and their patients, opposes House Bill 869.

House Bill 869 triples the Maryland cap on noneconomic damages for all cases arising after October 1, 2016 in which a court or an arbitration panel determines that there has been a “catastrophic” injury. Given the definition of “catastrophic injury,” it is likely that most serious medical malpractice cases would fall within the definition of “catastrophic injury.” As such, the effect of House Bill 869 will be to effectively eviscerate the Maryland cap on noneconomic damages.

The Maryland cap – which applies only to noneconomic damages – has been the one constant in the Maryland malpractice marketplace since the mid-1980s. The cap was then set at \$350,000 but in 2016 increased to \$770,000 (increases by \$15,000 on January 1st of each year). Approximately twenty-seven states have specific caps on noneconomic damages, with the majority being less than the allowed amount in Maryland.

One of the reasons for a cap on noneconomic damages is that pain and suffering and emotional distress are inherently subjective and there is no method to accurately calculate or measure how much money to pay someone for these items. On the other hand, loss of income from employment or the cost of nursing and custodial care for a seriously injured person or actual medical bills from hospitals, nursing homes and the like can be calculated and determined with some reasonable accuracy. These “economic loss” items have always been fully compensable under Maryland law.

The passage of House Bill 869 would almost surely precipitate the next malpractice crisis in Maryland. MedChi would urge an unfavorable report on House Bill 869.

For more information call:

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