



THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

Caps on Non-Economic Damages Frequently Asked Questions

Pennsylvania is consistently identified as having one of the worst legal climates in the nation. The Pacific Research Institute ranks Pennsylvania 46th in terms of its legal climate when compared to the other states. The high legal costs paid by Pennsylvania employers, health care providers, and governments stunt the Commonwealth's economic growth, job creation, and access to medical care. An important legal reform adopted in 35 other states is caps on non-economic damages.

Why is legal reform needed?

An efficient civil legal system is essential for a thriving economy. It ensures that businesses and individuals have proper incentives to produce safe products and provide safe services, and that true victims are fully compensated. An inefficient civil legal system imposes excessive costs on society, including forgone production of goods and services. All of us shoulder the burden of an expensive and inefficient civil legal system through higher prices, lower wages, decreased returns on investments in capital and land, restricted access to health care, and less innovation.

What are non-economic damages?

Non-economic damages refer to compensation for subjective, non-monetary losses such as pain, suffering, inconvenience, emotional distress, loss of society and companionship, loss of consortium, and loss of enjoyment of life. Economic damages refers to compensation for objectively verifiable monetary losses such as past and future medical expenses, loss of past and future earnings, loss of use of property, costs of repair or replacement, the economic value of domestic services, loss of employment or business opportunities.

Are there special circumstances related to enactment of caps on non-economic damages?

Yes. Pennsylvania is one of only five states that have a constitutional ban on the legislature to limit non-economic damages. The other states are Arizona, Kentucky, Oregon and Wyoming.

What is the process for amending the Pennsylvania Constitution?

A resolution must pass the General Assembly in two successive legislative sessions. The issue then goes before the voters during a primary election or general election. The earliest that a constitutional amendment could be adopted is May 2013. Once the constitution is amended the legislature can then enact legislation to cap non-economic damages.





Why should Pennsylvania cap non-economic damages?

Medical liability claims are known to involve extremely high stakes. Seventy percent of such claims are won by the defendant, dismissed or dropped because they have no merit, but when juries do award damages they give health care injury claimants significantly more for their “pain and suffering” than persons who have incurred the same kinds of injuries in car accidents or other settings. A cap on non-economic loss makes the insurance risk manageable; stabilizes the insurance market and provides for affordable coverage; assures that health care providers will buy coverage; and assures that a pool of money is available through the insurance mechanism to compensate injured patients fully for their economic losses.

Have other states adopted caps on non-economic damages?

Thirty-five states have adopted caps on non-economic damages in medical liability cases.

What is the legislative history of caps on non-economic damages in Pennsylvania?

The Pennsylvania General Assembly last addressed caps on non-economic damages in 2004. On March 10, the Senate approved Senate Bill 9, sponsored by Senator Hal Mowery (R-Cumberland), a constitutional amendment to permit the legislature to limit non-economic damages in medical liability cases. The bill failed to gain action in the House when Governor Rendell indicated he would veto the bill. In 2003, the House approved House Bill 1326, sponsored by Representative Mike Turzai (R-Allegheny). The bill failed to gain action in the Senate.

What organizations support caps on non-economic damages?

- Pennsylvania Chamber of Business and Industry
- Pennsylvania Medical Society
- The Hospital & Healthsystem Association of Pennsylvania
- The Insurance Federation of Pennsylvania
- The National Association of Independent Businesses
- The Pennsylvania Manufacturers Association

Are there plans to address this issue in 2011?

Since a constitutional amendment requires the General Assembly to pass a resolution in two successive legislative sessions, it is likely that the General assembly will wait until 2012 to take the first step in amending the constitution.