

## **Assembly Bill 35: Landmark Agreement to Modernize California's Medical Injury Compensation Reform Act (MICRA)**

Legislation that unifies stakeholders and puts the interests and wellbeing of Californians ahead of historic conflicts is at long last on the horizon. Assembly Bill 35 will ensure that health care is accessible and affordable while balancing compensation for Californians who have experienced health care related injury or death.

Under this groundbreaking policy, the rights of patients will be protected, and the essential guardrails established under the Medical Injury Compensation Reform Act (MICRA) that ensure broad based access to care remain firmly in place.

The new policy will extend the long-term predictability and affordability of medical professional liability insurance for those providing medical care in California while implementing a fair and reasonable increase to limits on non-economic damages in medical negligence cases starting January 1, 2023, with gradual increases thereafter.

### **Non-Economic Damages**

The current law limits recovery of non-economic damages to \$250,000, regardless of the number of defendants. AB 35 will increase the existing limit to \$350,000 for non-death cases and \$500,000 for wrongful death cases on the effective date January 1, 2023, followed by incremental increases over 10 years to \$750,000 for non-death cases and \$1,000,000 for wrongful death cases, after which a 2.0% annual inflationary adjustment will apply.

AB 35 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, AB 35 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
  
- 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

### **Next Steps**

AB 35 strikes a prudent and patient-focused balance between fair compensation to injured patients and the need for universal, high-quality, and cost-effective health care. More significantly, in the shadow of the most sweeping public health crisis in a century, it demonstrates a unifying willingness to put the interests of California patients ahead of divisive political positions.

Our broad and diverse coalition of physicians, community health centers, dentists, hospitals, nurses and hundreds of other organizations dedicated to affordable, accessible health care will be working closely with the Newsom Administration and the California Legislature to ensure this updated approach to medical negligence cases is enacted and signed into law.