



The Truth Behind AB 35 and Its Impact on California Physicians

When Governor Gavin Newsom signed California Assembly Bill 35 (AB 35) into law on May 23, 2022, it likely opened the door for a tremendous surge of medical malpractice litigation—with increasing frequency and cost—after it goes into effect on January 1, 2023.

AB 35 significantly diminishes the important protections provided by MICRA—the Medical Injury Compensation Reform Act of 1975. MICRA reined in out-of-control insurance rates by capping noneconomic damages in medical malpractice lawsuits at \$250,000. This has since ensured patient access to healthcare by helping to keep doctors, nurses, and other healthcare providers in practice, and hospitals and clinics open.

AB 35 will pose significant challenges to the medical community as potentially higher healthcare costs will fuel a possible reduction in access to services without any improvement in the quality of care.

AB 35 Increases the Caps on Noneconomic Damages

When the law takes effect on January 1, 2023, there will be an immediate rise in the dollar amount recoverable under the caps on noneconomic damages plus regular increases to these caps every year for the next 10 years, followed by 2% annual adjustments for inflation.

Additionally, instead of one single cap for noneconomic damages, AB 35 creates three separate caps that stack and are potentially available to plaintiffs in claims against multiple providers and medical facilities.

Noneconomic Damages: Non-Death

| | |
|---|--------------------|
| Cap for healthcare providers | \$350,000 |
| Cap for healthcare institutions | \$350,000 |
| Cap for unaffiliated healthcare providers/institutions that commit a separate and independent negligent act | \$350,000 |
| Total Cap | \$1,050,000 |

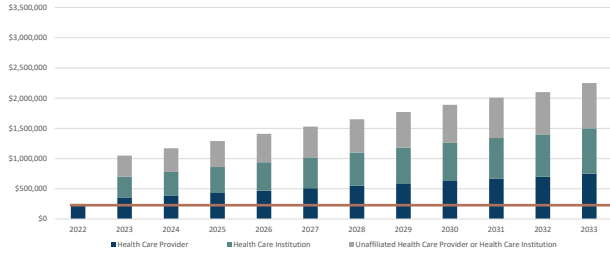
Noneconomic Damages: Patient Death

| | |
|---|--------------------|
| Cap for healthcare providers | \$500,000 |
| Cap for healthcare institutions | \$500,000 |
| Cap for unaffiliated healthcare providers/institutions that commit a separate and independent negligent act | \$500,000 |
| Total Cap | \$1,500,000 |



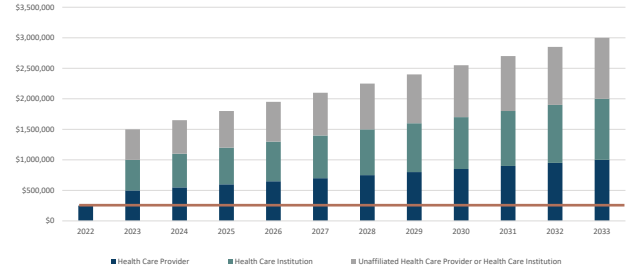
Starting in 2023, for non-death cases, the recoverable amount of noneconomic damages under the new caps will increase significantly from MICRA's current \$250,000 limit to \$1.05 million, a 420% increase. In wrongful death cases, that recoverable amount rises by 600% to \$1.5 million. By 2033, those recoverable amounts will have risen to \$2.25 million and \$3 million, respectively.

Non-Economic Damages in **Non-Death Claims** Stacked



■ The cap under MICRA
After 2032, cap will be adjusted
2% annually for inflation

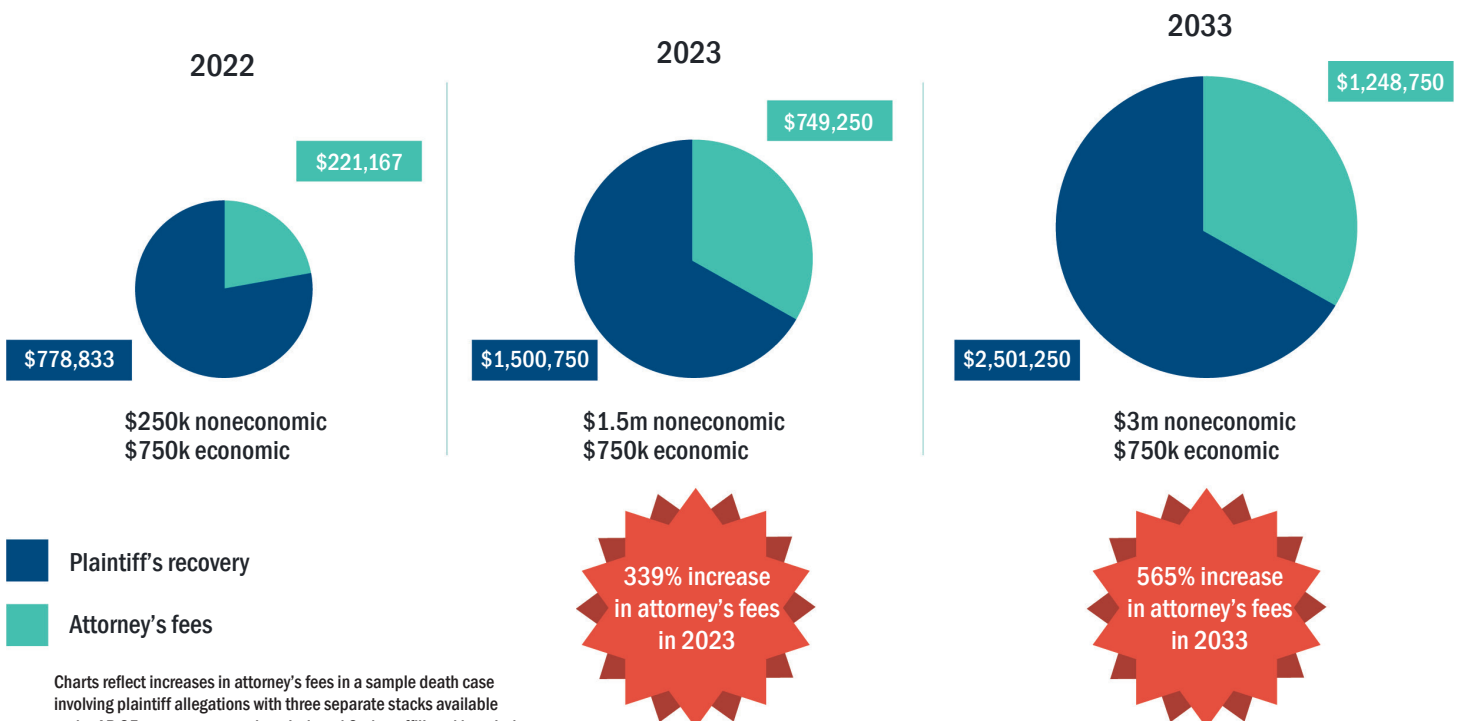
Noneconomic Damages in **Death Claims** Stacked



■ The cap under MICRA
After 2032, cap will be adjusted
2% annually for inflation

AB 35 Also Increases Attorney Contingency Fees

AB 35 allows plaintiff attorneys to collect 25% of the dollar amount recovered, if the recovery is due to a settlement agreement and release of claims executed by all parties prior to the filing of a civil complaint or arbitration demand; or 33% of the amount recovered, if the recovery is pursuant to a settlement agreement, arbitration, or judgment after the filing of a civil complaint or arbitration demand. Plaintiff attorneys will also be permitted to seek an even higher contingency fee by establishing a good cause and filing a motion with the court if a case has been tried or arbitrated.



Charts reflect increases in attorney's fees in a sample death case involving plaintiff allegations with three separate stacks available under AB 35, e.g., a surgeon, hospital, and 2nd unaffiliated hospital.



AB 35 Impact: What's Next

A cascade of negative effects from these drastic changes to MICRA are likely to emerge. It will take time for physicians and other healthcare entities to experience the far-reaching effects of AB 35 in real life. Medical malpractice premiums and healthcare costs will eventually rise as litigation costs and payouts skyrocket.

AB 35: Projected Impact

- Plaintiff incentive to delay resolution
- Plaintiff incentive to file more claims
- Plaintiff incentive to name more defendants
- Substantial increase in attorney's fees
- Increase in frivolous claims
- Decrease in percentage recovered by patients
- Increase in appellate activity/costs
- Increase in healthcare costs
- Impact on access to healthcare
- Incentive not to settle in pre-litigation

Avoiding and Defeating a Medical Malpractice Lawsuit is More Important Than Ever

CAP Provides:



- Risk management support for assessing/solving key risk areas
- Risk management training for physicians and staff



- Educational programs, CME webinars and events, timely and informative publications



- 24/7 early intervention hotline for adverse patient events
- Assertive and effective claims management



AB 35 is yet another challenge to overcome, and it will not be the last. With continued efforts and a unified voice from organizations committed to a positive future in healthcare, we will ensure that solutions outnumber our challenges.

For nearly 50 years, CAP's unique financial structure has withstood turbulent market shifts, ensuring our physician members receive the most competitive and most stable rates possible on their medical malpractice coverage. Opportunities can be found with a partner like CAP, where your financial security and practice needs are always our priority.

Today with more than 12,500 physician members, CAP remains staunchly committed to delivering outstanding protection with value-added resources, benefits, and expertise to support your practice's success and weather the conditions created by AB 35.

Read the full text of AB35 at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB35.

**For more information,
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Medical professional liability coverage is provided to CAP members through the Mutual Protection Trust (MPT), an unincorporated interindemnity arrangement organized under Section 1280.7 of the California Insurance Code. Members pay assessments, based on risk classifications, for the amount necessary to pay claims and administrative costs. No assurance can be given as to the amount or frequency of assessments. Members also make an Initial Trust Deposit, which is refundable according to the terms of the MPT Agreement.