



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 opened the door for a likely 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 per plaintiff. 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 stacks for noneconomic damage caps that 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

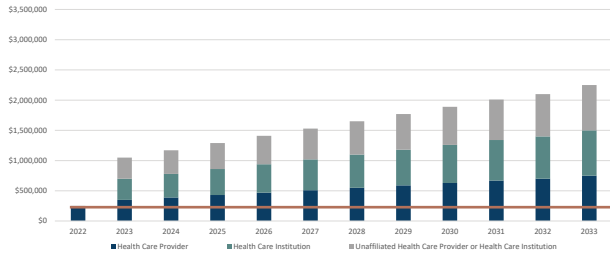
Noneconomic Damages: Patient Death

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



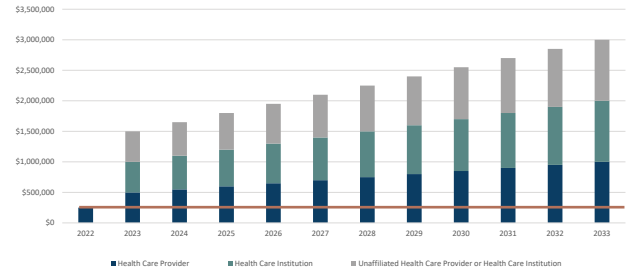
The cap on noneconomic damages in non-death cases in 2023 will rise from MICRA's \$250,000 to \$1.05 million, a 420% increase. In wrongful death cases, the cap rises by 600% to \$1.5 million. By 2033, those caps will have risen to \$2.25 million and \$3 million, respectively.

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



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

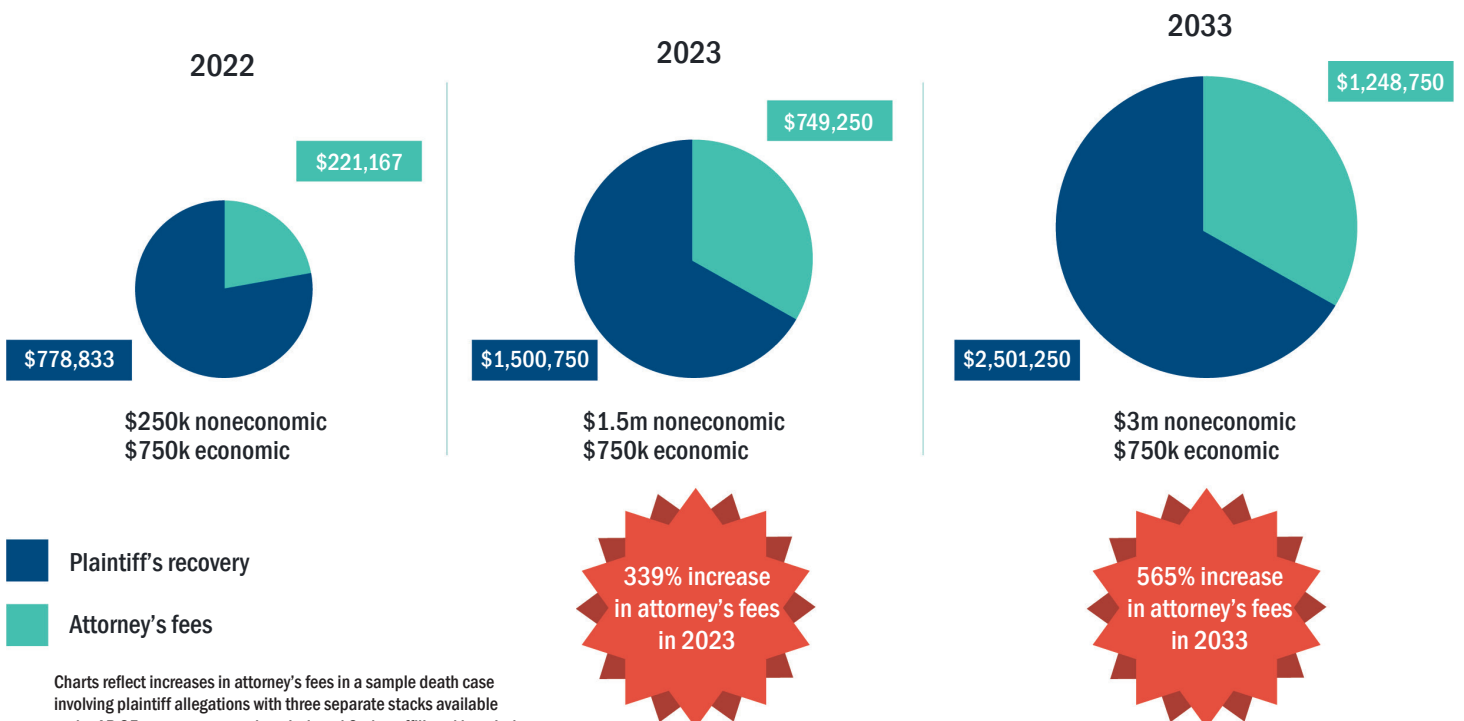
Noneconomic Damages in **Death Claims** Stacked



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

AB 35 Also Increases Attorney Contingency Fees

AB 35 provides attorneys 25% of the amounts 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 increases 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

Brokers with clients in California should use this time to help their clients assess current areas of medical malpractice risk, ensure sound strategies for avoiding medical professional liability, and respond correctly if a suit does arise.

CAPAssurance, a Risk Purchasing Group, understands the urgent need to provide their covered entities with the tools and expertise needed to navigate the anticipated impacts arising from AB 35. As a program of the Cooperative of American Physicians, Inc. (CAP),¹ we specialize in providing customized medical malpractice coverage structures for large medical groups, hospitals, and healthcare facilities who have an appetite for exceptional quality and service. Since 1975, CAP has been a physician-led and physician-owned service driven leader in the industry. CAP made it well known that AB 35 would pose significant challenges for California's healthcare providers and opposed any changes to MICRA from the start.

CAPAssurance is committed to ensuring that your clients get the best possible medical professional liability coverage with value-added services that include unparalleled risk management and practice management support, dedicated claims professionals, and an in-house law firm with top-tier defense attorneys—all to help them weather the conditions created by AB 35.



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

CAPAssurance offers:



- 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.

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



For more information,
please contact

Mitch Temple

VP of Business Development

213-473-8697

MTemple@CAPphysicians.com

www.CAPAssuranceprotects.com