

Indiana Medical Malpractice Act Damage Caps Set to Go Up July 1

Amundsen Davis Health Care Alert
June 27, 2019

On July 1, 2019, the caps on damages set by the Indiana Medical Malpractice Act will rise for the second time in two years. This increase, which applies to acts of malpractice that occur after June 30, 2019, will complete changes mandated by Senate Enrolled Act 28. The first set of increases went into effect for acts of malpractice occurring after June 30, 2017.

The increases affect both levels of the two-tiered cap system. The first tier limits the amount of damages for which an individual provider can be held liable. This cap will increase from \$400,000 to \$500,000. The second tier limits the total amount of money that a plaintiff can recover from both an individual provider and the Patient's Compensation Fund ("PCF"). This cap will increase from \$1,650,000 to \$1,800,000. I.C. § 34-18-14-3. A plaintiff may petition the PCF for recovery only if a plaintiff seeks recovery above the limits of the cap on an individual provider.

The increased caps will also affect the structured settlements that allow providers to resolve cases for less than the individual provider cap but still allow plaintiffs to claim excess damages from the PCF. As provided in I.C. § 34-18-14-4, structured settlements allow a provider to pay a plaintiff a combination of an immediate payment and an annuity that pays out periodic payments over time. The present money value of the annuity and immediate payment must exceed seventy-five percent of the individual provider's capped liability in order to allow a plaintiff to petition the PCF. With the increase in individual provider liability, the minimum structured settlement amount will increase from \$300,001 to \$375,001.

For ease of reference, a comparison of the existing caps and the new caps are set out in the table below.

The immediate impact of the increase in the caps is that the limits on individual provider's insurance will increase. Because providers are required to carry malpractice insurance up to the level of the individual cap, they will want to check with their carrier to ensure that they have adequate coverage.

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The impact of the increased caps on malpractice cases themselves will not be as immediate because the new limits only apply to alleged acts of malpractice that occur after June 30, 2019. Since a two year occurrence-based statute of limitations applies to malpractice cases, many cases under the new caps will likely not be filed until 2021. When those cases are filed, providers and their attorneys must be sure to evaluate them in light of the increased caps.

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