

## RECOMMENDATIONS MADE BY GOVERNOR'S TASK FORCE

The task force makes the following recommendations:

### **Economic Damages**

**Recommendation** – That in any award for lost wages the plaintiff should not receive any amount that would have been paid as income tax if the wages had been earned.

**Recommendation** – That an award for past medical bills should only be for the actual amount paid or to be paid by the plaintiff or on the plaintiff's behalf by a third person.

**Recommendation** – That an award for future medical bills should more accurately reflect what will be paid by the plaintiff or on the plaintiff's behalf by limiting the payment to a standard such as Medicare rates, the rates charged by a health insurer, or the amount paid by the Worker's Compensation Commission.

**Recommendation** – That the amount of a plaintiff's recovery should be reduced by the amount of benefits to which the plaintiff is entitled under any governmental entitlement.

**Recommendation** – That the amount of a plaintiff's recovery shall be reduced for past medical expenses paid on the plaintiff's behalf by means of a contract with a third party, unless there is the right to subrogation by the insurer under federal law.

### **Cap on Noneconomic Damages**

**Recommendation** – That the cap on noneconomic damages be reduced to \$500,000 in medical malpractice cases.

**Recommendation** – That the annual \$15,000 escalator in the cap on noneconomic damages be eliminated in medical malpractice cases.

**Recommendation** – That the double cap on noneconomic damages in death cases involving medical malpractice be eliminated.

### **Attorney's Fees**

**Recommendation** – That legislation should be enacted limiting in medical malpractice cases a plaintiff's attorney's fees using a sliding scale similar to California and other states.

**Recommendation** – That fee splitting by plaintiff's attorneys in medical malpractice cases be limited to circumstances where and to the extent to which each attorney actually participates in the preparation of the case.

### **Judgments**

**Recommendation** – That large judgments for noneconomic damages and future economic damages should be required to be paid in the form of periodic payments.

### **Procedures**

**Recommendation** – That the State should enact a rule of procedure similar to Federal Rule of Civil Procedure 68 allowing the defendant to make an offer of judgment and requiring a plaintiff who receives a judgment for less than the amount offered to pay all costs.

**Recommendation** – That the statute establishing that there be only six jurors in civil cases be amended to conform to the provision of the Maryland Constitution requiring at least six jurors in a civil case, thereby allowing a trial judge to establish the number of jurors in a case.

**Recommendation** – That the venue for medical malpractice actions be the venue in which the health care was provided.

**Recommendation** – That the venue for bad faith actions involving actions by health care providers against their insurance carriers for wrongful failure to settle a medical malpractice case shall be the venue where the provider took out the insurance policy.

### **Liability**

**Recommendation** – That health care providers who provide care in compliance with the Federal Emergency Medical Treatment and Active Labor Act shall be liable only for acts of gross negligence.

### **Alternative Dispute Resolution**

**Recommendation** – That the Health Claims Arbitration Office be abolished.

**Recommendation** – That there be established a statewide mediation program in the courts allowing parties to a medical malpractice action to engage in mediation at the earliest possible date.

**Recommendation** – That legislation be enacted allowing health care providers and patients to enter into agreements providing for binding arbitration of medical malpractice claims.

**Recommendation** – That the Court of Appeals Standing Committee on Rules of Practice and Procedure study and make recommendations concerning establishment of health courts.

### **Certificate of Merit**

**Recommendation** – That if the Health Claims Arbitration Office is abolished the certificate of merit requirements under the Health Claims Arbitration Act be retained for court proceedings and that the clerks of the circuit courts should be required to forward all certificates of merit to an appropriate unit of State government.

**Recommendation** – That the plaintiff's certificate of merit specify the breach of the standard of care for each health care provider named as a defendant.

**Recommendation** – That the plaintiff in a medical malpractice case should be required to file with the court following completion of discovery an enhanced certificate of merit specifying with detail each defendant's deviation from the standard of care.

### **Expert Witness**

**Recommendation** – That the State should enact legislation similar to Virginia requiring an expert testifying to the standard of care in a medical malpractice action to have engaged in the clinical practice of medicine in the defendant's specialty or a related field of medicine within one year of the date of the alleged act or omission giving rise to the cause of action.

**Recommendation** – That if the defendant is board certified an expert attesting to or testifying as to the standard of care be board certified in the same or a related specialty as the defendant.

**Recommendation** – That testimony by a health care provider as an expert witness on the standard of care in a medical malpractice case be considered the practice of medicine for purposes of disciplinary proceedings.

**Recommendation** – That the Department of Labor, Licensing, and Regulation study and report on whether life care experts should be licensed by the State.

### **Evidence**

**Recommendation** – That the State should enact legislation similar to Colorado allowing a health care provider to make an apology or other benevolent gesture and making such a statement or gesture inadmissible in subsequent proceedings.

**Recommendation** – That evidence that a family member or other individual will provide unreimbursed care for the plaintiff be admissible for purposes of assessing the plaintiff's damages, and that this evidence may be considered by the court when deciding a motion for remittitur.

### **Insurance**

**Recommendation** – That rate compression legislation not be enacted.

**Recommendation** – That each insurer providing medical malpractice liability insurance in the State be required to submit annually to the Maryland Insurance Administration a report detailing its operations and finances for the past year.

### **Patient Safety**

**Recommendation** – That in a disciplinary proceeding before the Board of Physicians the State need only prove by a preponderance of evidence instead of by clear and convincing evidence that a physician violated the standard of care.

**Recommendation** - That hospitals failing to report adverse events involving death or serious disability be subject to a fine.

**Recommendation** – That in a judicial action following a final decision by a hospital or health care facility to limit, suspend, or revoke the credentials of a health care provider that the loser of the action be required to pay the winner's reasonable attorney's fees.

### **Alternatives to Litigation**

**Recommendation** – That the Maryland Insurance Administration study and report on the concept of a no-fault birth-related neurological injury compensation fund.

### **Short-term Relief**

**Recommendation** – That short-term relief including a stop-loss provision should be adopted only in conjunction with a meaningful and comprehensive package of reforms that includes tort reform, and that short-term relief should not be adopted without a meaningful and comprehensive package of reforms that includes tort reform.

**Recommendation** – That if short-term relief including a stop-loss provision is adopted it should only be adopted with a sunset provision so that it terminates after an appropriate period of time.

### **Nursing Home and other High Risk Physicians and Practices**

**Recommendation** – That the location and nature of a health care provider's practice should not affect the cost or availability of medical malpractice insurance.