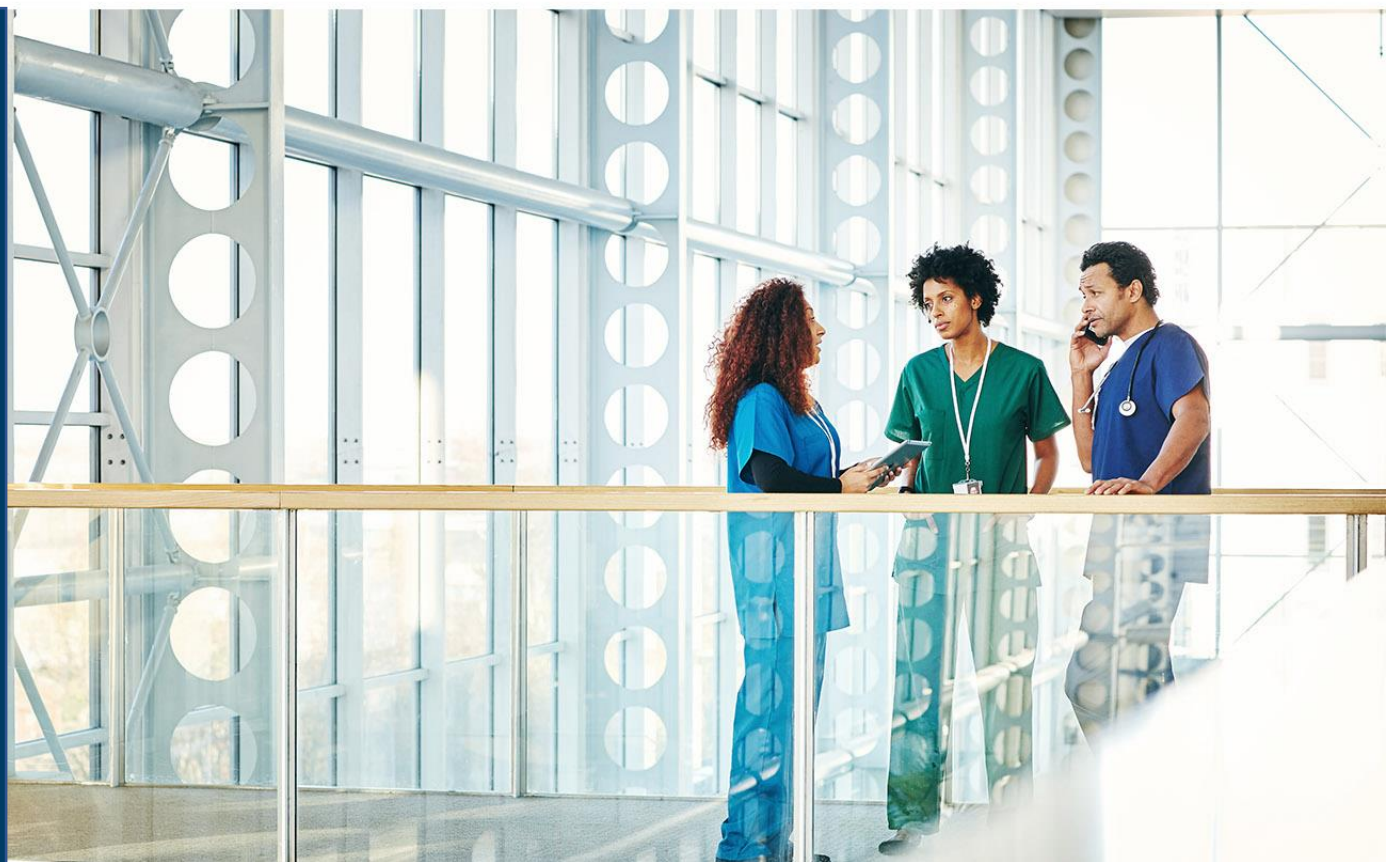




COOPERATIVE OF  
AMERICAN PHYSICIANS

# MICRA and AB 35

## Truth and Impact



# Overview

1. CAP's Commitment to Protecting MICRA
2. CAP's Efforts to Oppose Negotiations to Change MICRA
3. Impact of Assembly Bill 35 (AB 35)
4. What's Next?



# What is MICRA?

## The Medical Injury Compensation Reform Act (MICRA)

Legislation passed in 1975 to:

- Keep out-of-control lawsuits in check
- Reduce medical malpractice coverage costs
- Stabilize healthcare costs
- Protect access to healthcare

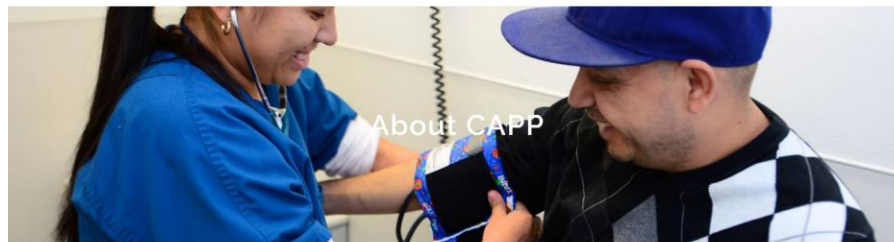


# CAP's Commitment to Protecting MICRA

- Since 1975:**
- CAP has staunchly opposed any changes whatsoever to MICRA
  - CAP has spent millions of dollars to ensure MICRA's protection
- 

- 2022:**
- CAP conducted polling showing that the Fairness for Injured Patients Act (FIPA) ballot initiative could have been readily defeated
  - CAP did not support the proposed changes to MICRA
  - The CAP Board authorized \$10 million to fight the anti-MICRA ballot initiative





WHO WE ARE

COALITION

Any changes to MICRA to weaken its protections will result in higher health care costs overall, no improvement in quality, and reduced access to services. That is why CAPP's large and diverse coalition is committed to ensuring MICRA remains intact and viable in California.



CONTACT

Californians Allied for Patient Protection  
info@micra.org  
t: (949) 448-7992

# “MICRA’s Modernization”

April 27, 2022

The Honorable Tom Umberg  
California State Senate  
1021 O Street, Suite 6730  
Sacramento, CA 95814

The Honorable Eloise Reyes  
California State Assembly  
1021 O Street, Suite 8210  
Sacramento, CA 95814

## February

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- Quest...

For these reasons, the members of CAPP are pleased to be united in supporting AB 35 and we urge an “aye” vote when it is before you for consideration.

Sincerely,



1215 K Street, Suite 2015, Sacramento, CA 95814  
916.448.7992 | www.micra.org



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MICRA coalition, are pleased to  
sation Reform Act of 1975.

extend the long-term  
AB 35 will settle a decades-  
rival of a November 2022

protecting the rights of injured

liability protections for those

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or medical malpractice starting

and avoid uncertain and  
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supporting AB 35 and we urge an

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IPA BETA  
HEALTHCARE GROUP

# CAP Takes Action

- CAP alerted its physician members of the negotiations and potential changes to MICRA
- CAP issued multiple communications over several months to ensure members were aware of the pending legislation
- Members were asked to contact their local medical societies, CMA, and their legislators to voice opposition

**More than 1,200 CAP physician members participated in efforts to fight the compromise and potential legislation.**



**AB 35 was rushed through the legislative process with brief committee review and suspension of rules and was passed using “gut and amend” process.**

May 2022

Governor Newsom Signed AB 35 Into Law



# AB 35: Impact

## Increase in Noneconomic Damages Cap

The increase in potential noneconomic damages is significant, from the current \$250,000 cap per claimant in MICRA to an immediate potential for \$1,050,000 (\$350,000 stacked three times) or \$1,500,000 (\$500,000 stacked three times) for wrongful death claims filed January 1, 2023, or later.

### 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
<b>Total Cap: \$1,050,000</b>	

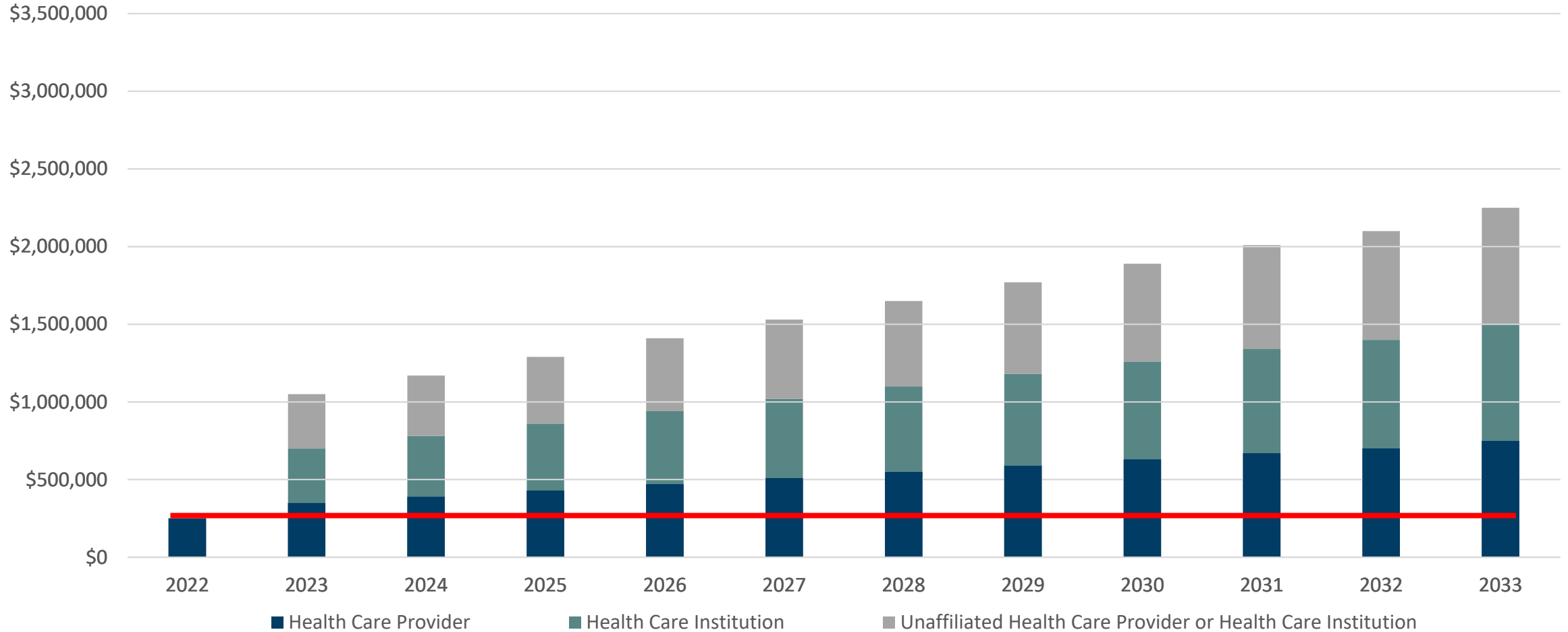
**420% increase  
in 2023**

### 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
<b>Total Cap: \$1,500,000</b>	

**600% increase  
in 2023**

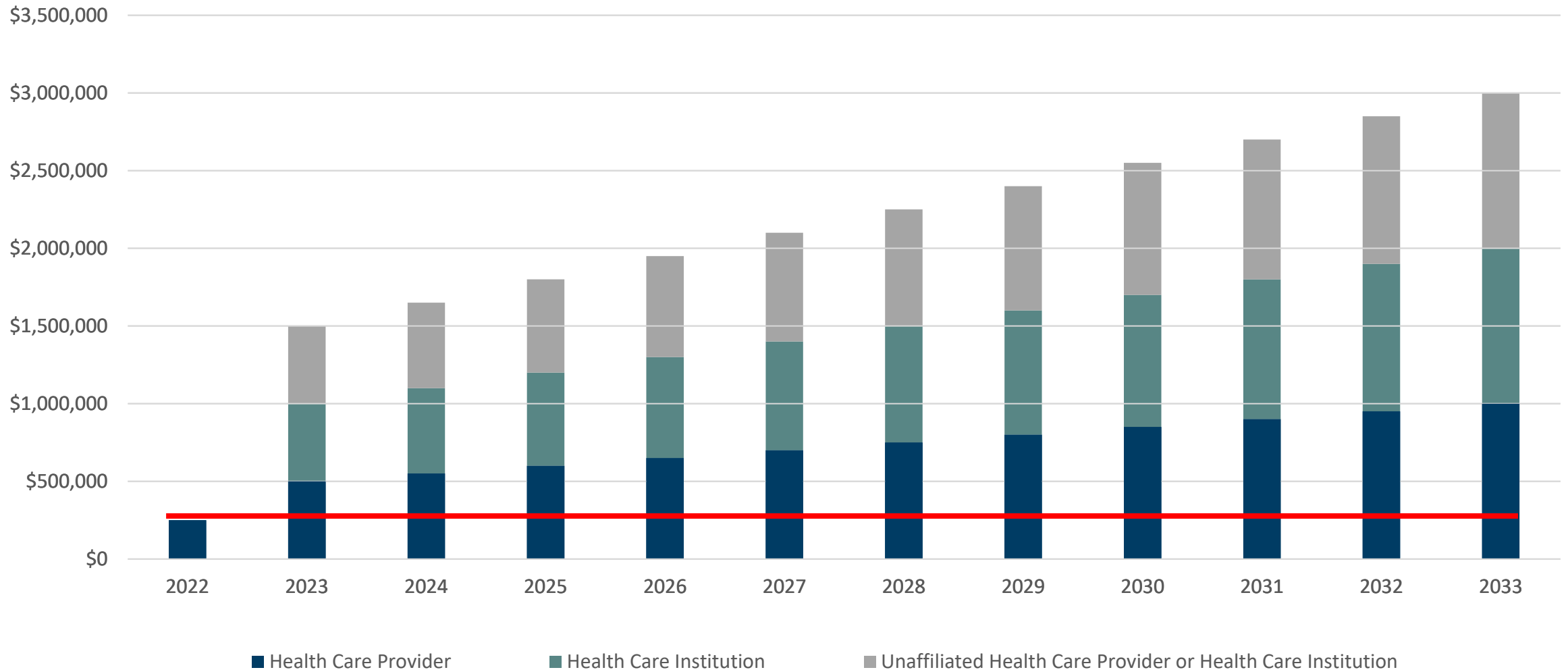
# Noneconomic Damages in **Non-Death Claims** Stacked



- **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: Impact Summary

## MICRA

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- Caps the limit on noneconomic damages at \$250,000
- One cap for noneconomic damages
- No annual increase in cap
- Attorney's fees limited to:
  - 40% of 1st \$50,000
  - 33% of next \$50,000
  - 25% of next \$500,000
  - 15% all amounts above \$600,000
- Award payments allowed over time

## AB 35

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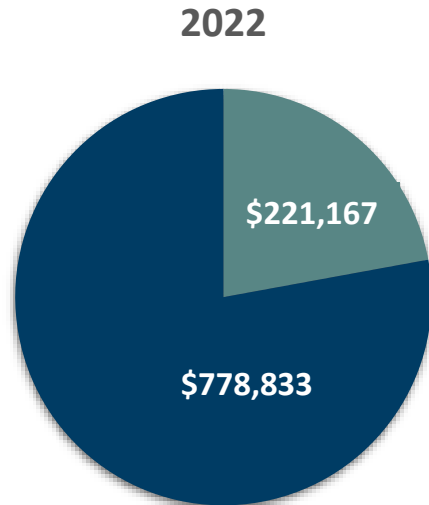
- Caps immediately increase in wrongful death claims to \$1,500,000 (\$500,000 stacked three times) and the caps for other claims immediately increase to \$1,050,000 (\$350,000 stacked three times)
- Caps increase over 10 years for wrongful death claims to \$3,000,000 (\$1,000,000 stacked three times) and the caps for other claims increase over 10 years to \$2,250,000 (\$750,000 stacked three times), with annual 2% increase thereafter
- Attorney's fees increase to:
  - 25% if settled prior to complaint being filed or arbitration demanded
  - 33% if complaint filed
  - Attorneys may also petition for even higher fees if the case goes to arbitration/litigation
- Minimum judgment required to request periodic payments increases from \$50,000 to \$250,000.
- The cap amount applicable is determined at the time of judgment, arbitration award, or settlement

# AB 35: Impact

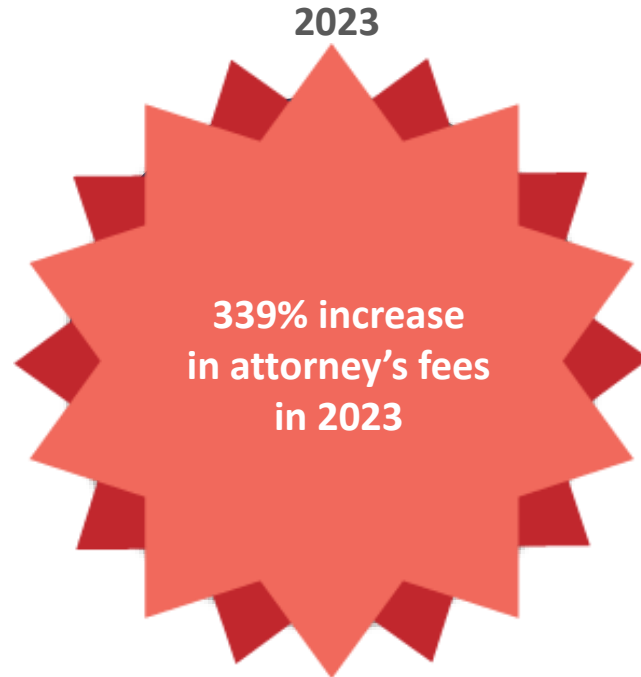
## Increase in Attorney's Fees

### Death Allegations: (3 stacks)

- **Surgeon:** Retained foreign body
- **Hospital:** Nurses gave improper count
- **2nd, Unaffiliated Hospital:** Failure to diagnose



**\$250k** noneconomic  
**\$750k** economic



**\$1.5m** noneconomic  
**\$750k** economic



**\$3m** noneconomic  
**\$750k** economic

# 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



# AB 35: Impact

## The Plaintiff Attorneys' Perspective

“What we did today was a great first step.”

“I think that in 2024 we’re going to see more change.”

(In reference to plans to turn his attention to other states and fund ballot initiatives to raise malpractice caps in Colorado, Montana "and any other state.")

-Nicholas C. Rowley, Plaintiff Attorney and FIPA Author

“The dispute over the cap might not be over just yet. It will need to be revisited in the future. The new legislation is more fair, but almost fair is not enough. We need a law that compensates victims of medical malpractice fully. We are not there yet.”

-R. Rex Parris, Personal Injury Attorney, Parris Law Firm



# Avoiding and defeating a medical malpractice lawsuit is more critical now than ever.

## Ask your malpractice carrier about:



- One-on-one risk management support for assessing/solving key risk areas
- Focus on common areas of claims risk, (i.e., tracking and recall, defensive documentation, and informed consent/refusal)



- 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





# What's Next

## AB 35 – Information and Resources

CAP is unwavering in our efforts to ensure California's independent physicians continue to have access to secure, affordable medical professional liability coverage, along with valuable resources to help them run successful medical practices.

Visit <https://www.capphysicians.com/MICRAAlert>  
for the latest updates and resources on AB 35.



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