LONG TERM CARE & SENIOR LIVING BLOG

New Missouri Noneconomic Damages Cap

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Approximately three years after the Missouri Supreme Court declared the non-economic damages cap unconstitutional in 2012, Governor Nixon signed into law Senate Bill 239 on May 8, 2015. This bill amends R.S.Mo.§538.210 and creates new limitations on the recovery of noneconomic damages in medical negligence actions filed against health care providers to include long term care facilities.

The cap is divided into two tiers: $700,000 for death and "catastrophic injuries" and $400,000 for all other claims. R.S.Mo. §538.210.2 (2) and (3). The $700,000 "catastrophic injury" cap applies to claims for injuries resulting in quadriplegia, paraplegia, loss of two or more limbs, brain injury that results in permanent cognitive impairment with the permanent inability to make independent decisions on or engage in activities of daily living (eating, dressing, bathing, etc), irreversible failure of one or more major organ systems and vision loss (central vision acuity is not better than 20/200 in the best eye with the best correction). R.S.Mo. §538.205 (1). The determination of whether the claim involves a "catastrophic" injury and the application of the higher cap is made by the court on a post-trial motion, following a jury verdict with more than $400,000 in noneconomic damages. R.S.Mo. §538.210.2(9). The cap is also subject to a 1.7% increase each year. R.S.Mo. §538.210.2 (8). Unfortunately, the amendments to the statute increase the existing wrongful death damages cap from $350,000 to $700,000.

The new statute will become effective on August 28, 2015. The statute is not clear as to whether it applies to causes of action that accrue on or after August 28, 2015 or to causes of action filed on or after this date. We suspect there will be debate over this issue after its enactment. We will continue to update you as Missouri courts interpret and apply the statute.

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