

## **INITIATIVE FINANCIAL INFORMATION STATEMENT**

### **The Medical Liability Claimant's Compensation Amendment**

#### **SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT**

The Medical Liability Claimant's Compensation Amendment entitles claimants in a medical liability case to recover 70 percent of the first \$250,000 in all damages received and 90 percent of all damages in excess of \$250,000 after reasonable and customary costs are deducted and before the claimant's attorneys' fees are deducted.

The Financial Impact Estimating Conference principals have found it difficult to determine the potential financial impact on state and local governments. Terms such as "reasonable and customary costs," "received by the claimant" and "all damages received" versus "all damages" are subject to varying definition and financial impacts.

Generally, when damages are recovered on behalf of a claimant, they are paid to the claimant's attorney. They are then distributed to the various interests with claims on the funds before the remainder is paid to the claimant. Typical claims against these damages include such items as outstanding tax liabilities, Medicaid reimbursements, hospital liens, subrogated insurance claims, litigation costs, and attorneys' fees. It is unclear which of these claims would fit within the definition of reasonable and customary costs.

Based on the information provided through public workshops, arguments before the Florida Supreme Court, and information collected through staff research, the Financial Impact Estimating Conference principals expect that the proposed amendment could have the following outcomes.

- The amendment may make collection of claims more difficult because the claimant will be entitled to a specific percent of the damages. The claimant would still be liable for the valid claims, but would not have to pay them out of the damages unless the claims are considered within the definition of "reasonable and customary costs." If a claimant chooses not to pay the claims, then a separate collection action would be necessary to collect the claim. It is unlikely that all funds owed would be recovered through a collection action.
- If public assistance liens are within the definition of "reasonable and customary costs," then there will not be a financial impact on state and local governments. If public assistance liens are not within the definition of "reasonable and customary costs," then there may be a financial impact on state and local governments based on uncollected liens. The Financial Impact Estimating Conference principals are unable to determine the exact cost to state and local governments as a result of uncollected liens, but the state may face some unrecoverable Medicaid costs.
- The amendment may reduce the number of medical liability cases brought each year. This could result in two distinctly different financial impacts for the state and local governments. The amendment could restrain the growth of physician fee increases as they relate to medical liability, which would benefit state and local governments' insurance plans. However, fewer cases brought each year could result in claimants using more public assistance programs or public hospitals providing more uncompensated care. This would have a negative impact on state and local governments, which cannot be determined.