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INSIGHT · MEDICAL MALPRACTICE

California's MICRA Caps in 2026: How AB 35 Reshapes Medical-Malpractice Verdicts

Grand Park Law Group · November 7, 2026 · 7 min read



Under AB 35, the limit that governs a medical negligence case is the one in effect on the date of judgment, award, or settlement.

Assembly Bill 35 rewrote the noneconomic damages limit in California medical negligence actions. It also changed attorney fee limits, periodic payment of future damages, and the treatment of pre-suit expressions of sympathy. This memorandum sets out the statutory text in force as of November 2026 and the limits that apply to resolutions reached in calendar year 2026.

I. Question Presented

For an action against a health care provider based on professional negligence, what limit applies to noneconomic damages in 2026 under Civil Code section 3333.2 as amended by Assembly Bill 35, and what related changes did that bill make?

II. Short Answer

For cases filed or arbitrations demanded on or after January 1, 2023, the statute sets separate limits for injury cases and wrongful death cases. Each limit rises on a fixed annual schedule. Applying that schedule, the figures in effect during 2026 are **$470,000 per category for non-death injury** and **$650,000 per category for wrongful death**. The statute creates up to three categories of defendants, each with its own limit. AB 35 also tied contingency fees to the stage of resolution, raised the threshold for periodic payment of future damages to $250,000, and protected certain pre-suit statements by providers.

III. Governing Law

A. The Enactment

Assembly Bill No. 35 (2021-2022 Reg. Sess.) was approved by the Governor and filed with the Secretary of State on May 23, 2022, as Statutes 2022, chapter 17. Its title states that it amends Business and Professions Code section 6146, Civil Code section 3333.2, and Code of Civil Procedure section 667.7. It also adds Chapter 3 (commencing with Section 104340) to Part 2 of Division 103 of the Health and Safety Code.

B. Scope of Section 3333.2

Civil Code section 3333.2, subdivision (a), applies to any action for injury against a health care provider or health care institution "based on professional negligence." The plaintiff may recover noneconomic losses, including pain, suffering, inconvenience, physical impairment, and disfigurement, "subject to the limitations in this section." (Civ. Code, § 3333.2, subd. (a).) "Professional negligence" is a negligent act or omission by a provider "in the rendering of professional services" that proximately causes injury or death, where the services are within the scope of the provider's license. (*Id.*, subd. (j)(4).)

C. The Base Amounts

Subdivision (b) governs injury cases that do not involve wrongful death. Subdivision (c) governs wrongful death. Each subdivision sets three limits:

1. Health care providers, collectively, regardless of their number.
2. Health care institutions, collectively.
3. Providers or institutions **unaffiliated** with the first two groups, for acts of professional negligence "separate and independent" from theirs, occurring at, or in relation to medical transport to, an unaffiliated institution. (Civ. Code, § 3333.2, subd. (b)(3).)

The base amount for each injury category is $350,000. The base amount for each wrongful death category is $500,000. Whether a defendant is "unaffiliated" is "determined at the time of the professional negligence." (Civ. Code, § 3333.2, subd. (j)(3).)

D. The Escalation Schedule

Subdivision (g) makes the section effective for "all cases filed or arbitrations demanded on or after" January 1, 2023. Thereafter, the injury amounts increase by $40,000 "each January 1st for 10 years" up to $750,000. The wrongful death amounts increase by $50,000 each January 1 for 10 years, up to $1,000,000. The amount "in effect at the time of judgment, arbitration award, or settlement" applies. (Civ. Code, § 3333.2, subd. (g).) Beginning January 1, 2034, the $750,000 and $1,000,000 amounts are adjusted for inflation by 2 percent each year. (*Id.*, subd. (h).)

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IV. Analysis

A. The 2026 Figures

Reading subdivision (g) to apply the first increase on January 1, 2024, the schedule produces the following amounts per category:

- 2023: $350,000 (injury); $500,000 (death).
- 2024: $390,000; $550,000.
- 2025: $430,000; $600,000.
- **2026: $470,000; $650,000.**
- 2033: $750,000; $1,000,000, after the tenth increase.

Because the operative date is the date of judgment, award, or settlement, a case filed in 2023 and resolved in 2026 takes the 2026 figure. Timing of resolution therefore affects the available amount.

B. Three Limits, Not One

Subdivision (f) states that, for each of subdivisions (b) and (c), the stated amounts "provide three separate limits of liability that may apply." The amounts apply regardless of the number of defendants or causes of action. (Civ. Code, § 3333.2, subd. (f).) In a 2026 injury case, the theoretical maximum is $1,410,000 (three categories at $470,000). In a 2026 wrongful death case, it is $1,950,000 (three at $650,000). Reaching the third category requires proof of an unaffiliated defendant whose negligence was separate and independent. The statute also bars stacking by a single defendant: no provider or institution defendant is liable "in more than one of the categories." (*Id.*, subds. (d), (e).) Subdivision (i) confirms that no award may exceed the applicable amounts.

C. Contingency Fees

As amended, Business and Professions Code section 6146 limits fees by stage. The limit is 25 percent of the recovery where the matter settles before a complaint or demand for arbitration is filed. It is 33 percent where recovery comes by settlement, arbitration, or judgment after filing. (Bus. & Prof. Code, § 6146, subd. (a)(1), (2).) If the case is tried or arbitrated, counsel may move for a higher fee, which the court or arbitrator may allow on a showing of good cause. (*Id.*, subd. (a)(3).) The limits apply whether the client is an adult, an infant, or a person of unsound mind. Where periodic payments are ordered, the court values them on the plaintiff's projected life expectancy for purposes of the fee calculation. (*Id.*, subd. (b).)

D. Periodic Payment of Future Damages

Code of Civil Procedure section 667.7 now applies where the award includes "two hundred fifty thousand dollars ($250,000) in future damages" or more. At either party's request, the court must order those damages paid periodically. (Code Civ. Proc., § 667.7, subd. (a).) The Legislative Counsel's Digest to AB 35 describes this as an increase in the minimum amount required. Future lost earnings do not end on the judgment creditor's death; they pass to persons the creditor was obligated to support. (*Id.*, subd. (c).)

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E. Pre-Suit Benevolent Gestures

The new protection for providers' statements appears in Health and Safety Code section 104340, not in an amendment to Evidence Code section 1160. Subdivision (a) covers statements, writings, or benevolent gestures expressing sympathy, regret, or benevolence, "or suggesting, reflecting, or accepting fault," relating to pain, suffering, death, or an adverse patient safety event or unexpected health care outcome. The communication must be made to the patient, family, or representative "prior to the filing of a lawsuit or demand for arbitration." Such communications are confidential and privileged. They may not be used or admitted in civil, administrative, regulatory, licensing, or disciplinary proceedings "as evidence of an admission of liability or for any other purpose." The section incorporates the protections of Evidence Code sections 1119, 1152, 1157, and 1160. By contrast, Evidence Code section 1160 itself, which applies to accidents generally, provides that "a statement of fault" accompanying an expression of sympathy is not made inadmissible by that section.

V. Practical Considerations

- **Calendar the resolution date.** The applicable amount is fixed at judgment, award, or settlement. A resolution after January 1, 2027 will carry the next scheduled increase.
- **Plead and prove category facts.** Access to the second and third limits depends on how defendants are grouped. Affiliation under subdivision (j)(3) turns on employment, contract, ownership, joint venture, or common health system, measured at the time of the negligence.
- **Test whether the claim is professional negligence.** The cap applies only to claims within subdivision (j)(4). In *Holland v. Silverscreen Healthcare, Inc.* (2025) 18 Cal.5th 364, the Supreme Court, construing MICRA's arbitration statute (Code Civ. Proc., § 1295), distinguished claims against a skilled nursing facility in its capacity as a provider from claims based on custodial duties, which are "at most incidentally related" to professional services. *Holland* did not address section 3333.2, and its application to the damages limit is not settled by that opinion.
- **Fee agreements.** Retainers for these matters should track the 25 and 33 percent stages and the motion procedure in section 6146, subdivision (a)(3).
- **Disclosure conversations.** Statements protected by Health and Safety Code section 104340 must precede the filing of suit or a demand for arbitration.

VI. Authorities Cited

- *Holland v. Silverscreen Healthcare, Inc.* (2025) 18 Cal.5th 364
- Bus. & Prof. Code, § 6146
- Civ. Code, § 3333.2
- Code Civ. Proc., § 667.7
- Evid. Code, § 1160
- Health & Saf. Code, § 104340
- Assem. Bill No. 35 (2021-2022 Reg. Sess.), Stats. 2022, ch. 17

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Practice	Medical Malpractice
Topics	MICRA · AB 35 · Damages
Publication	Medical Negligence · November 7, 2026

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