



American Academy of Family Physicians

Liability: Limits on Damage Awards

AAFP State Government Relations

Issue

Limits on damage awards (caps) in medical malpractice suits are a cornerstone of addressing the medical liability insurance crisis. While the federal government has yet to pass a law addressing liability insurance, the states continue to be the battleground for malpractice tort reform.

Reigning in exorbitant jury awards in malpractice cases will help prevent recurrence of the period of rapidly escalating liability insurance premiums recently experienced. This escalation has been acute particularly for family physicians practicing obstetrics and gynecology, further reducing access to certain services in underserved areas.

Considerations

AAFP constituent chapters have made great progress in advancing this central tenet of effectively addressing the liability insurance crisis. Chapters should continue to educate state legislators, particularly, around the importance of this issue. Limiting damage awards is an effective strategy for decreasing claim severity and stabilizing liability insurance premiums in the mid- to long-term; short-term gains are unlikely to materialize. Additionally, the likelihood of court challenges to damage caps is quite high. Through the judicial process, caps in a number of states have been thrown out. In many of the states without a cap, such limits are unconstitutional.

Initiatives to amend state constitutions are a slippery slope not to be traveled lightly. For example, in the 2004 election in Florida, medicine and trial lawyers took competing liability and tort reform ideas to ballot initiative. Voters approved initiatives limiting damages and attorney fees, but also approved physician license revocation.

State Activity

As of October 2005, 17 states (AL, AZ, CT, DE, IA, KY, MN, NH, NY, OR, PA, RI, TN, VT, WA, WI, WY) and the District of Columbia did not have limits on damage awards. Of those, limits are unconstitutional—by state Supreme Court decision, constitutional prohibition or amendment—in seven (AL, AZ, NH, OR, PA, WI, WY).

Eleven states (AL, AR, CA, CO, ID, IN, KS, ME, MT, NC, TX) enacted damage award limits of \$250,000; in line with AAFP's policy for federal liability reform. Meanwhile, ten states (AK, GA, HI, MI, MO, NV, NJ, OK, SC, UT) placed their limit between \$250,001 and \$499,999, with the remaining 13 states (FL, IL, LA, MD, MA, MS, NE, NM, ND, OH, SD, VA, WV) enumerate a cap of \$500,000 or higher.

AAFP Policy

The AAFP Professional Medical Liability policy may be viewed at www.aafp.org/x7019.xml.

The AAFP *Medical Liability Strike Force Report* may be viewed at http://members.aafp.org/members/PreBuilt/congress_boardreportI.pdf (*Members Only*)

State	Limits on Damage Awards
Alabama	<i>No limitations. Limits declared unconstitutional by State Supreme Court.</i>
Alaska	Enacted 2005: §09.55.549. Noneconomic damages limited to \$250,000; limited to \$400,000 for wrongful death or injury over 70% disabling; limits not applicable to intentional or reckless acts or omissions. §9.17.020. Punitive damages limited to \$500,000 or 3 times compensatory damages.
Arizona	<i>No limitations. Limits constitutionally prohibited.</i>
Arkansas	§16-55-205 – 209. Punitive damages limited to \$250,000 per plaintiff or 3 times amount of economic damages. Not to exceed \$1 million. Limits adjusted for inflation at 3-year intervals beginning in 2006. Contingent on proof of recklessness or intentional malice.
California	Civil Code §3333.2. \$250,000 limit for noneconomic damages.
Colorado	§13-64-302. \$1 million total limit on all damages; \$300,000 noneconomic limitation.
Connecticut	<i>No limitations.</i>
Delaware	§18.6855. <i>Punitive damages may be awarded only on finding of malicious intent to injure or willful or wanton misconduct. No mandated limit.</i>
Florida	§766.118. Noneconomic damages limited to \$500,000 per claimant. Death or permanent vegetative state noneconomic damages not to exceed \$1 million. §768.73. Punitive damages limited to the greater of 3 times amount of economic damages or \$500,000. If deliberate intent to harm, no limit on punitive damages.
Georgia	Enacted 2005: §51-13-1. Noneconomic damages in medical malpractice actions limited to \$350,000 against physicians regardless of number of defendants. Noneconomic damages limited to \$350,000 against single medical facility; \$700,000 against multiple facilities. Aggregate amount of noneconomic damages limited to \$1.05 million.
Hawaii	§663.8.5, 8.7. \$375,000 limit for pain and suffering damages.
Idaho	§6.1603-4. \$250,000 limit on noneconomic damages, adjusted annually according to state's average annual wage. Punitive damages limited to \$250,000 or amount 3 times of compensatory damages.
Illinois	Enacted 2005: §735 5/2-1706.5. Noneconomic damages limited to \$500,000 against individual physician, \$1 million against hospital. §735 5/2-1115. Punitive damages not recoverable in medical malpractice cases.
Indiana	§34-18-4-3. \$1,250,000 total limit. Liability limited to \$250,000 per health care provider. Any award beyond limits covered by Patient Compensation Fund.
Iowa	<i>No limitations.</i>
Kansas	§60.19a02. \$250,000 limit on noneconomic damages recoverable by each party from all defendants.

State	Limits on Damage Awards
Kansas (cont.)	§60.3702. Punitive damages limited to lesser of defendant's highest gross income for prior 5 years or \$5 million.
Kentucky	<i>No limitations.</i>
Louisiana	RS §40:1299.42. \$500,000 limit for total recovery. Health care provider liability limited to \$100,000. Any award in excess of all liable providers paid from Patient's Compensation Fund.
Maine	Enacted 2005: §24.2907. Noneconomic damages in medical liability actions limited to \$250,000; punitive damages limited to \$75,000. §18A.2.804. Noneconomic damages in wrongful death cases limited to \$400,000, punitive damages limited to \$75,000.
Maryland	§3-2A-09(A). Noneconomic damages limited to \$650,000 from 2005 to 2008, thereafter increasing by \$15,000 per year beginning on January 1 of applicable year.
Massachusetts	§231.60H. \$500,000 limit for noneconomic damages, some exceptions released from limitations.
Michigan	§600.1483. \$280,000 limit on noneconomic damages; \$500,000 limit on noneconomic damages applies to certain other circumstance. Limit adjusted annually by state treasurer according to consumer price index.
Minnesota	§549.20. <i>No limitation for punitive damages but are only allowed if defendant proven to have deliberate disregard to safety. Award subject to judicial review.</i>
Mississippi	§11.1.60. \$500,000 limit on noneconomic damages. §11.1.65. Punitive damages only awarded if willful malice or gross negligence proved. Court determines if award granted and amount. Damages limited based on defendant's net worth.
Missouri	Amended 2005: §538.210. Noneconomic damages limited to \$350,000 regardless of number of defendants. (Inflation index repealed.) Enacted 2005: §510.265. Punitive damages limited to \$500,000 or 5 times net amount of judgment.
Montana	§25.9.411. \$250,000 limit on noneconomic damages. §27.1.221. Liability for punitive damages determined by court, defendant must have been proven guilty of deliberate malice. Enacted 2005: §27.6.103. Damages for negligence awarded based on "reduced chance of recovery."
Nebraska	§44.2825. Total damages limited to \$1,750,000. Health care provider liability limited to \$500,000. Any excess of total liability of all health care providers paid from Excess Liability Fund.

State	Limits on Damage Awards
Nevada	<p>§41A.035. \$350,000 limit on noneconomic damages, no exceptions.</p> <p>§42.005. Punitive damages limited to \$300,000 or 3 times compensatory damages; only awarded by court for fraud, oppression, or malice.</p>
New Hampshire	<i>No limitations. Limits declared unconstitutional by State Supreme Court.</i>
New Jersey	<p>§2A:15-5.14. \$350,000 limit on punitive damages, or 5 times compensatory damages, whichever is greater.</p>
New Mexico	<p>§41.5.6-7. \$600,000 total limit on all damages. Health care providers not liable for any amount over \$200,000; any judgment in excess paid from Patient's Compensation Fund.</p>
New York	<i>No limitations.</i>
North Carolina	<p>§1D-25. \$250,000 limit on punitive damages, or 3 times economic damages, whichever is greater.</p>
North Dakota	<p>§32.42.02. \$500,000 limit on noneconomic damages.</p> <p>§32.03.2.08. Economic damage awards in excess of \$250,000 subject to court review.</p>
Ohio	<p>§2315.18. \$250,000 limit on noneconomic damages or three times plaintiff's economic loss, determined by court. Maximum noneconomic damages \$350,000 per plaintiff or \$500,000 per occurrence. No limit for permanent injury that prevents victim from independently caring for self.</p> <p>§2315.21. Punitive damages limited to twice amount of economic damages or percentage of defendant's net worth. No limit where defendant acted knowingly.</p>
Oklahoma	<p>§63-1-1708.1F. \$300,000 limit on noneconomic damages; also specific to obstetric and emergency room care. No limits for negligence or wrongful death.</p> <p>§23-9.1. Punitive damages based on misconduct.</p>
Oregon	<p><i>No limitations. Limits declared unconstitutional by State Supreme Court; 2004 ballot measure to institute noneconomic damage limits rejected by voters.</i></p> <p>§31.740. Punitive damages not awarded if physician is found acting in scope of duties without malice.</p>
Pennsylvania	<p><i>No limitations. Constitutionally prohibited.</i></p> <p>§40.1301.812-A. Punitive damages granted only if defendant found guilty of willful misconduct or reckless disregard.</p>
Rhode Island	<p><i>No limitations.</i></p> <p>§9.19.34.1. Collateral source rule requires jury to reduce award for damages by sum</p>

State	Limits on Damage Awards
Rhode Island (cont.)	equal to difference between total benefits received and total amount paid to secure benefits by plaintiff.
South Carolina	Enacted 2005: §15-32-220. Noneconomic damages limited to \$350,000 against single health care provider or facility; limit of \$1.05 million for multiple defendants. Limits increased or decreased annually based on Consumer Price Index. No limits on noneconomic or punitive damages for cases of willful negligence or misconduct.
South Dakota	§21-3-11. \$500,000 limit on noneconomic damages. No limit on special damages.
Tennessee	<i>No limitations.</i>
Texas	Civil Practice §74.301. \$250,000 limit per claimant for noneconomic damages. \$500,000 limit per claimant for noneconomic damages in judgments against health care institutions.
Utah	§78.14.7.1. \$400,000 limit on noneconomic damages for actions arising after July 1, 2002. Adjusted annually by Administrative Office of Courts.
Vermont	<i>No limitations.</i>
Virginia	§8.01-581.15. \$1.5 million limit on recovery damages. Increased by \$50,000 each year from 2001 to 2006. Increased by \$75,000 each year in 2007 and 2008.
Washington	§4.56.250. <i>No specific limits on damage awards. Judgment for noneconomic damages cannot exceed formulation of average annual wage and life expectancy of injured.</i>
West Virginia	§55.7B.8. \$250,000 limit for noneconomic damages. \$500,000 limit for compensatory damages, limit goes up beginning in 2004 according to inflation index. Physicians must carry at least \$1 million malpractice insurance to qualify for limits.
Wisconsin	July 2005: State Supreme Court declared caps on noneconomic damages in medical injury cases unconstitutional, <i>Ferdon v. Wisconsin</i>. (Statute §893.55(4)(d).)
Wyoming	§97.3.027. <i>Limits prohibited. 2004 ballot measure to adopt constitutional amendment allowing noneconomic damage limits rejected by voters.</i>

Source: National Conference of State Legislatures. *State Medical Malpractice Laws: Section 1.* (<http://www.ncsl.org/standcomm/sclaw/statelaws1.htm>, accessed 13 October 2005.)