

## Caps on Damages

Close to 30 states have laws in place that limit damages in medical liability actions. Of these laws, states vary widely in the amount of the cap and type of damages that are covered by the cap. For example, California has a \$250,000 cap on non-economic damages that was included in its Medical Injury Compensation Reform Act (MICRA) of 1975. The AMA supports a MICRA-based cap. By comparison, Nebraska has a \$1.75 million cap on total damages (of which qualified health care providers shall be liable for \$500,000).

In addition, state laws vary in the type of circumstances in which the cap applies. For example, Michigan has a secondary cap on non-economic damages of \$500,000 that applies in cases where the plaintiff is hemiplegic, paraplegic, or quadriplegic due to an injury to the brain or spinal cord, or where the plaintiff has permanently impaired cognitive capacity. Likewise in many states the cap on damages does not apply in cases of gross malpractice. Finally, caps in many states are adjusted annually for inflation, changing the level of the cap each year.

In at least 16 states, courts have upheld a cap on non-economic or total damages as constitutional. Courts have overturned a cap as unconstitutional in at least 12 states; however, some of these states have since enacted a new law, including Ohio, Kansas, Texas, and Wisconsin. In several states, such as Arizona, Kentucky, Pennsylvania, and Wyoming, the state Constitution explicitly prohibit caps on damages.

Below please find a summary of state laws that cap damages in medical liability actions.

### Caps on Damages - Summary of State Laws and Legal Challenges

(Note: with the exception of Pennsylvania, the following information does not address state caps on punitive damages.)

#### **Alabama** - None

\$400,000 cap on non-economic damages; \$1 million cap on wrongful death damages, overturned, *Moore v. Mobile Infirmary Association*, 592 So.2d 156 (1991).

**Alaska** - \$250,000 cap on non-economic damages for claims involving personal injury, and a \$400,000 cap on non-economic damages for claims involving wrongful death or a severe permanent physical impairment that is more than 70 percent disabling. A single cap applies regardless of the number of health care providers against whom the claim is asserted or the number of causes of action filed (2005).

**Arizona** - None – Article 2 sec. 31 and Article 18 sec. 6 of Arizona’s constitution prohibits limiting recoverable damages.

**Arkansas** - None – Article 5 sec. 32 of Arkansas’ constitution prohibits limiting damages recoverable for injury or death.

**California** - \$250,000 cap on non-economic damages. (1975) Upheld, *Fein v. Permanente Medical Group*, 38 Cal. 3d 137, 695 P.2d 665 (1985), *Stinnett v. Tam*, 198 Cal. App. 4th 1412 (Cal. App. 2011).

In 2014, the California Supreme Court ruled that the state's non-economic damage cap cannot be further pared to reflect the amount of a pre-trial settlement. In its ruling, the court said the cap applies only to judgments awarding non-economic damages. *Rashidi v. Moser*, cite forthcoming (Ca. 2014).

**Colorado** - \$1 million cap on **total** damages, including any derivative claim by any other claimant, of which non-economic losses shall not exceed \$300,000 (including any derivative claim by any other claimant). Upon good cause shown and if the court determines such limit would be unfair, the court may award damages in excess of the limit. In this case, the court may award the present value of additional future damages only for loss of such excess future earnings or such excess future medical and other health care costs, or both. (1988) Upheld, *Scholz v. Metropolitan Pathologists P.C.*, 851 P.2d 901 (1993).

**Connecticut** - None

**Delaware** - None

**D.C.** - None

**Florida** – None. \$500,000 cap on non-economic damages in personal injury cases overturned as violative of the Equal Protection Clause of the Florida Constitution, *North Broward Hosp. Dist. v. Kalitan*, 219 So.3d 49 (Fl. 2017)

Previous \$500,000 cap on non-economic damages per claimant for causes of action for injury due to medical negligence of physicians and other health care providers. No cap on non-economic damages in wrongful death cases involving multiple claimants. Cap applied per claimant regardless of the number of defendants. Cap increases to \$1 million for certain exceptions, including catastrophic injury, a total amount recoverable from all practitioners, regardless of the number of claimants. For non-providers, \$750,000 cap on non-economic damages per claimant for causes of action for injury or wrongful death due to the medical negligence of nonpractitioners, regardless of the number of nonpractitioner defendants. Cap increased to \$1.5 million for certain exceptions (2003).

Previous cap on non-economic damages in wrongful death cases involving multiple claimants struck down as violative of the Equal Protection Clause of the Florida Constitution *Estate of McCall v. United States*, 134 So.3d 894 (Fl. 2014).

**Georgia** - \$350,000 cap on non-economic damages awarded against all health care providers and a separate \$350,000 cap on non-economic damages awarded against a single medical facility that can increase to \$700,000 if more than one facility is involved. No more than \$1.05 million can be awarded in a medical liability cause of action.

**Health Care Providers**- Any judgment in a medical liability action, including wrongful death, against a health care provider shall not exceed \$350,000 in non-economic damages regardless of the number of defendant health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based. The cap applies to each claimant; however, the term “claimant” is defined as including all persons claiming to have sustained damages as a result of the bodily injury or death of a single person.

**Medical Facilities** – Establishes a separate \$350,000 cap on non-economic damages awarded in medical liability actions, including wrongful death, against a single medical facility including all persons and entities for which vicarious liability theories may apply, regardless of the number of separate causes of action on which the claim is based. If the lawsuit involves more than one medical facility, the total amount of non-

economic damages that can be awarded against the facilities is \$700,000 with a single facility not liable for more than \$350,000 (2005).

Cap overturned *Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, 691 S.E.2d 218 (Ga. 2010).

**Hawaii** - \$375,000 cap on non-economic damages, with exceptions for certain types of damages, i.e. mental anguish (1986).

**Idaho** - \$250,000 cap on non-economic damages per claimant in personal injury and wrongful death actions. The cap will be adjusted annually beginning July 1, 2004 based on the average annual wage. The limit does not apply to causes of action arising out of willful or reckless misconduct, or felonious actions. (2003) Upheld, *Kirkland v. Blaine County Medical Center*, 134 Idaho 464, 4 P.3d 1115 (2000).

**Illinois** – None. \$500,000 cap on economic and non-economic damages overturned, *Lebron v. Gottlieb Mem. Hosp.*, 930 N.E.2d 895 (Ill. 2010).

Previous \$500,000 cap on non-economic damages for awards in a medical liability cause of action, including wrongful death, against a physician, the physician’s business or corporate entity, and personnel or health care professionals.

Separate \$1 million cap on non-economic damages for awards in a medical liability cause of action, including wrongful death, against a hospital and its personnel or hospital affiliates. Cap applies to all plaintiffs in any civil action arising out of the care. Cap applies to injuries that occur after the effective date of the act (2005).

Previous \$500,000 cap on non-economic damages, overturned *Best v. Taylor Machine Works*, 689 N.E.2d 1057 (Ill. 1997).

\$500,000 cap on economic and non-economic damages overturned, *Wright v. Central DuPage Hospital Assn.*, 347 N.E.2d 736 (Ill. 1976).

**Indiana** - \$1.25 million cap on **total** damages for any act of malpractice that occurs after 6/30/1999 and before 7/1/2017. \$1.65 million total cap for any act of malpractice that occurs after 6/30/2017 and before 7/1/2019. \$1.8 million total cap for any act of malpractice that occurs after 6/30/2019.

Health care providers are not liable for more than: \$250,000 for an act of malpractice that occurs after 6/30/1999 and before 7/1/2017; \$400,000 for an act of malpractice that occurs after 6/30/2017 and before 7/1/2019; and \$500,000 for an act of malpractice that occurs after 6/30/2019.

Any amount due that is in excess of the total liability for health care providers will be paid through the Patient Compensation Fund. Upheld, *Johnson v. St. Vincent Hospital*, 404 N.E. 2d 585 (1980). Statute revised, effective July 1, 2017.

**Iowa** - None

**Kansas** - \$250,000 cap on non-economic damages. The cap will increase to \$300,000 for causes of action accruing after July 1, 2014; \$325,000 after July 1, 2018; and \$350,000 after July 1, 2022. This is the total amount of non-economic damages recoverable by each party from all of the defendants. (1988) Upheld, *Samsel v. Wheeler Transport Services, Inc.*, 246 Kan. 336 (1990). Upheld, *Miller v. Johnson*, 289 P.3d 1098 (Kan. 2012).

Previous law struck down as unconstitutional, *Kansas Malpractice Victims Coalition v. Bell*, 243 Kan. 333, 757 P.2d 251 (1988).

**Kentucky** - None. Section 54 of Kentucky's Constitution prohibits cap on damages.

**Louisiana** - \$500,000 cap on **total** damages, excluding damages recoverable for medical care. A health care provider covered by the Patient's Compensation Fund shall not be liable for more than \$100,000. The Patient's Compensation Fund will cover the excess amount awarded up to the cap (1975).

Upheld caps on total damages, but future medical expenses are excluded from cap, *Butler v. Flint Goodrich Hospital of Dillard University*, 607 So. 2d 517 (1992). Upheld *Oliver v. Magnolia Clinic*, 85 So.3d 39 (La. 2012).

**Maine** - \$500,000 cap on non-economic damages in wrongful death actions (2007).

**Maryland** - The limit on non-economic damages is frozen at \$650,000 until January 1, 2009, after which time the cap will increase annually by \$15,000 per year. Cap applies in aggregate to all claims and defendants arising from the same medical injury. (Cap also applies in wrongful death actions if the claim involves only one claimant or beneficiary). In wrongful death actions involving two or more claimants or beneficiaries, then the total cap on non-economic damages is \$812,500 (125% of the cap) (2005).

Court ruled that cap does not apply if pre-trial arbitration process waived *Semsker v. Lockshin* (Montgomery County Civil No. 283674) (2009).

Previous law upheld as constitutional, *Murphy v. Edmunds*, 325 MD 342, 601 A.2d 102 (Maryland 1992).

**Massachusetts** - \$500,000 cap on non-economic damages, with exceptions for proof of substantial disfigurement or permanent loss or impairment, or other special circumstances which warrant a finding that imposition of such limitation would deprive the plaintiff of just compensation for the injuries sustained (1986).

Court declined to rule on constitutionality of cap, *Allock v. Bannister*, 2011-CA-00289-SCT (Mass. 2012).

**Michigan** - \$280,000 cap on non-economic damages, adjusted annually for inflation, except in cases where the plaintiff is hemiplegic, paraplegic, or quadriplegic due to an injury to the brain or spinal cord, or where the plaintiff has permanently impaired cognitive capacity rendering him incapable of making independent, responsible life decisions and permanently incapable of independently performing the activities of normal, daily living, or the plaintiff has had permanent loss or damage to a reproductive organ resulting in the inability to procreate, then non-economic damages shall not exceed \$500,000. As of 2009 the \$280,000 cap is \$410,800 and the \$500,000 cap is \$733,500. (1993) Upheld, *Zdrojewski v. Murphy*, 657 N.W.2d 721 (Mich. App. 2002); Upheld *Smith v. Botsford General Hospital* (6th Cir. 2005). A 2012 bill clarified that loss of society or companionship constitutes noneconomic damages and is therefore subject to Michigan's noneconomic damages limit.

**Minnesota** - None

**Mississippi** - \$500,000 cap on non-economic damages per plaintiff for medical liability causes of action filed against a health care provider (2004). Upheld *Clemons v. US*, Case No. 4:10-CV-209-CWR-FKB (Miss. App. 2013).

**Missouri** – \$400,000 cap on non-economic damages. \$700,000 cap on non-economic damages for cases involving catastrophic injury.

\$350,000 cap on non-economic damages, overturned, *Watts v. Lester E. Cox Medical Centers*, No. SC91867 (2012).

**Montana** - \$250,000 cap on non-economic damages per occurrence. If a single incident of malpractice injures multiple, unrelated patients, the \$250,000 cap applies to each patient and all claims deriving from injuries to that patient (1995, 1997).

**Nebraska** - \$1.75 million in **total** damages. Health care providers who qualify under the Hospital-Medical Liability Act (i.e. carry minimum levels of liability insurance and pay surcharge into excess coverage fund) shall not be liable for more than \$500,000 in total damages. Any excess damages shall be paid from the excess coverage fund (1976, 1984, 1986, 1992, 2003).

Upheld, *Prendergast v. Nelson*, 256 N.W.2d 657 (1977); *Gourley ex. rel. Gourley v. Nebraska Methodist Health System Inc.*, 265 Neb. 918, 633 N.W.2d 43 (Neb. 2003).

**Nevada** - \$350,000 cap on non-economic damages awarded to each plaintiff from each defendant (2004).

Upheld, *Tam v. Eighth Judicial District Court of the State of Nevada, et al.*, 2015 WL 6453603 (Nev. 2015).

**New Hampshire** - None

\$875,000 cap on non-economic damages, overturned, *Brannigan v. Usitalso*, 587 A.2d 1232 (N.H. 1991).

\$250,000 cap on non-economic damages in medical malpractice, overturned, *Carson v. Maurer*, 424 A.2d 825 (N.H. 1980).

**New Jersey** - None

**New Mexico** - \$600,000 cap on **total** damages, excluding punitive damages and past and future medical care. Health care providers personal liability shall not exceed \$200,000, any award in excess of this amount shall be paid by the patient compensation fund. (1992) Upheld, *Fed. Express Corp. v. United States*, 228 F. Supp. 2d 1267 (NM 2002).

**New York** - None

**North Carolina** - \$500,000 cap for all claims brought by all parties arising out of the same professional services. Indexed for inflation starting on January 1, 2014. There shall be no cap if the trier of fact finds both that (1) the plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death; and (2) the defendant's acts or failures, which are the proximate cause of the plaintiff's injuries, were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional or with malice. (2011)

**North Dakota** - \$500,000 cap on non-economic damages (1995). Economic damage awards in excess of \$250,000 are subject to judicial review for reasonableness (1987).

Previous law struck down as unconstitutional. *Arneson v. Olson*, 270 N.W.2d (N.D. 1978).

**Ohio** - Establishes a sliding cap on non-economic damages. The cap shall not exceed the greater of \$250,000 or three times the plaintiff's economic loss up to a maximum of \$350,000 for each plaintiff or \$500,000 per occurrence. The maximum cap will increase to \$500,000 per plaintiff or \$1,000,000 per occurrence for a claim based on either (A) a permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system, or (B) a permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and person life sustaining activities (2002).

Note: The Ohio Legislature's previous attempts to enact a law with a cap on non-economic damages were overturned by the Ohio Supreme Court. For example, \$250,000-500,000 sliding scale cap on non-economic damages, overturned, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio 3d 451, 715 N.E. 2d (1999). However, the state upheld a general tort cap in 2007, *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468.

**Oklahoma** - \$350,000 cap on non-economic damages for civil actions arising from claims for bodily injury. Cap applies regardless of the number of parties against whom the action is brought or the number of actions brought. There shall be no limit on the amount of non-economic damages that may be awarded in a claim for bodily injury resulting from negligence if a judge and jury find, by clear and convincing evidence, that the defendant's acts or failures to act were: (1) in reckless disregard for the rights of others; (2) grossly negligent; (3) fraudulent; or (4) intentional or with malice. (2011).

Previous law struck down as unconstitutional *Woods v. Unity Health Center, Inc* 2008 OK 97 (2008).

Cap does not apply in wrongful death cases because the Oklahoma Constitution specifically limits damage limitations in those types of cases.

**Oregon** - \$500,00 cap on non-economic damages.

\$500,000 cap on non-economic damages in wrongful death cases upheld, *Greist v. Phillips*, 322 Or. 281, 906 P.2d 789 (1995), *Hughes v. PeaceHealth*, 178 P.3d 225 (Or. 2008).

\$500,000 cap on non-economic damages, overturned, *Lakin v. Senco Products*, 987 P.2d 463 (Or. 1999).

\$500,000 cap on non-economic damages expanded, *Horton v. OHSU, et al.*, 359 Or. 160 (Or. 2016).

**Pennsylvania** - None. Article III sec. 18 of Pennsylvania's Constitution prohibits limiting damages for personal injuries or death. Punitive damages are capped at 2 times actual damages.

**Rhode Island** - None

**South Carolina** - \$350,000 stacked cap on non-economic damages. A claim for non-economic damages in a medical liability action against a single health care provider or single health care institution cannot exceed \$350,000. If the award is against more than one health care provider or institution, the total award for non-economic damages cannot exceed \$1.05 million, with each defendant not liable for more than \$350,000. The cap applies separately to each claimant and adjusts annually for inflation based on the Consumer Price Index (2005).

**South Dakota** - \$500,000 cap on total general (non-economic) damages. (1985, revived by 1996 court decision).



Struck down cap on total damages, revived cap on non-economic damages, *Knowles ex. rel. Knowles v. United States*, 544 N.W. 2d 183 (SD 1996).

**Tennessee** – \$750,000 cap for non-economic damages for all injuries and occurrences in an action, including health care liability actions. The limit on non-economic damages applies regardless of if the action is based on a single act or omission or on a series of acts or omissions. The cap shall include actions by the plaintiff as well as derivative (%), in which case recovery for any damages barred claims by a spouse or child of the claimant, including loss of consortium. The limit on compensation for non-economic damages may increase to \$1 million in cases of catastrophic loss or injury, which may include: (1) spinal cord injuries resulting in paraplegia or quadriplegia; (2) amputation of two hands or two feet or one of each; (3) third degree burns covering 40 percent of the body or the face; or (4) wrongful death of a parent with a minor child(ren). The cap shall not apply to personal injury or wrongful death cases when: (1) the defendant had a specific intent to inflict serious physical injury; (2) the defendant intentionally falsified, destroyed or concealed records containing material evidence for the purpose of evading liability in the claim; or (3) the defendant was under the influence of alcohol, drugs or other intoxicant or stimulant resulting in substantial impairment and causing the injury or death. (2011).

**Texas** - \$250,000 cap on non-economic damages for claims against physicians and other health care providers. The cap applies per claimant regardless of the number of defendants. Also provides a \$250,000 cap on non-economic damages awarded against a single health care institution and a \$500,000 cap on non-economic damages if a judgment is rendered against two or more health care institutions, with the total amount of non-economic damages for each individual institution, not exceeding \$250,000 per claimant, irrespective of the number defendants, causes of action, or vicarious liability theories involved. The total amount of non-economic damages for health care institutions cannot exceed \$500,000. Combining the liability limits for physicians, health care providers, and institutions, the maximum non-economic damages that a claimant could recover in a health care liability claim is capped at \$750,000 (2003).

Proposition 12, a ballot initiative to amend the Texas Constitution to specifically allow the legislature to enact laws that place limits on non-economic damages in health care and medical liability cases, was approved by the voters on September 13, 2003.

\$500,000 cap on all civil damages for wrongful death, indexed for inflation since 1977. The cap does not apply to medical, hospital, and custodial care received before judgment or required in the future. In 2002 the cap reached approximately \$1.4 million (1977, limited by 1990 court decision).

\$500,000 cap on non-economic damages (adjusted annually), overturned as applied to cases other than wrongful death, *Rose v. Doctors Hospital*, 801 S.W. 2d 841 (Tex. 1990).

2003 statute upheld *Watson v. Hortman*, 2012 U.S. Dist. LEXIS 41679.

**Utah** - \$250,000 cap on non-economic damages for causes of action arising before July 1, 2001, \$400,000 cap on non-economic damages for causes of action arising on or after July 1, 2001 but before July 1, 2002. Indexed annually for inflation thereafter. (1986, 2001) Upheld, *Judd v. Drezga*, 2004 UT 91 (Ut. 2004). \$450,000 hard cap on non-economic damages for claims arising after May 15, 2010.

**Vermont** - None

**Virginia** - \$2.0 million cap on **total** damages. Cap will increase by \$50,000 per year starting July 1, 2012 until the increases stop at \$3 million for claims after July 1, 2031. (2011) Upheld, *Etheridge, et.al. v. Medical Center Hospitals*, 237 Va. 87, 376 S.E.2d 525 (Va. 1989).

**Washington** - None

Sliding cap on non-economic damages, overturned, *Sophie v. Fiberboard Corp.*, 771 P.2d 711 (Wash. 1989).

**West Virginia** - \$250,000 cap on non-economic damages per occurrence, regardless of the number of plaintiffs and number of defendants. The cap increases to \$500,000 per occurrence, for the following types of injuries; permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life sustaining activities. The limits only apply to defendants who have at least \$1,000,000 per occurrence in medical liability insurance. The limits will be adjusted annually for inflation up to \$375,000 per occurrence or \$750,000 for injuries that fall within the exception (2003).

Upheld previous cap on non-economic damages, *Robinson v. Charleston Area Med. Center*, 186 W.Va. 720 (1991); *Verba v. Ghaphery* 552 S.E. 2d 406 (W.Va. 2001). Current cap upheld: *MacDonald v. City Hospital*, 715 S.E.2d 405 (W. Va. 2011).

**Wisconsin** - \$750,000 cap on non-economic damages (Enacted 2006).

\$350,000 cap on non-economic medical malpractice damages overturned as unconstitutional *Ferdon v. Wisconsin Patients Compensation Fund*, 2003AP988 (2005).

**Wyoming** - None - Constitution prohibits caps.

Updated Sept 2017