



TORT REFORM & MEDICAL MALPRACTICE

Tort reform refers to proposed changes in the civil justice system that aim to reduce the ability of victims to bring tort litigation or to reduce damages they can receive.

It was purportedly, as common belief, that medical malpractice insurance companies were being forced to flee the marketplace by high jury awards since the 1980's. The cost of medical malpractice insurance was becoming so unaffordable that the expense load was affecting the actual practice of medicine and availability of affordable health care. In order to ease this perceived crisis, several states enacted tort reform measures to implement limits on medical malpractice awards along with other boundaries and procedures. These steps taken over the past thirty years are usually known as caps.

Responding to the significant increases be charged by the carriers remaining in the business, several state legislatures enacted limits on non-economic damages. (Non-economic damages include intangible harms such as pain and suffering and punitive damages.) In the legislature's opinion, excessive jury awards, they reasoned, drove up the price of insurance for health care providers. The legislators inferred that they could combat the emerging medical malpractice insurance crisis by imposing caps on awards. Federal legislators have entertained this idea, proposing a \$250,000 nationwide medical malpractice cap as recently as 2014.

As of 2016, most states have enacted some type of medical malpractice tort reform. In total, thirty-three states have established some type of medical malpractice award cap. As of 2016, thirty-three states have imposed caps on damages sustained in medical malpractice lawsuits: Alaska, California, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin. The amounts and applications of these caps vary by state. Some of these damage caps are rigid, while others can be adjusted for inflation or severity of the damage.

For example, four states (Alaska, Florida, Ohio, and Massachusetts) have caps that can be waived or increased in severe cases. The caps in Oregon and Maine apply only to wrongful death cases. Four states have a \$250,000 general award cap, four states have a total damages cap, eighteen states have non-economic damages caps between \$250,000 and \$500,000, and four states have damages caps that exceed \$500,000.

The Robert Wood Johnson Foundation, offers an in-depth report of medical malpractice information and a chart listing medical malpractice damage caps by state.

Some Negative Aspects of Tort Reform

In several states, some advocates feel that tort reforms created more harm than good. Consumers complain that medical malpractice caps prevent injured patients from getting their day in court. Various legal firms are unable to take on cases that are not long term financially viable. Although these caps and other limitations vary by state, claimants in many states can recover only \$250,000 in a law suit on a gross basis. Costs and legal fees are deducted from these capped awards or settlements. This obviously results in many law firms refusing to take these cases fully aware that an injured party will receive little or nothing for their effort.

These issues have created an opinion of some that caps to medical damages often mean that injured patients are denied rightful compensation.

Another criticism of certain state's tort reforms focuses on the reduced litigation caused by medical malpractice caps. There is a school of thought that allowing lawsuits provide incentive for healthcare providers to protect their patients therefore improving overall care. According to this logic, physicians fearing lawsuits will actually provide better patient care than those with none of the accountability that comes from litigation. Some experts suggest that fewer medical malpractice lawsuits may influence some providers to become more complacent with their health care.

Other research indicates that although medical malpractice caps reduce the burden on insurers, they do not alleviate the growing problem of increasing insurance premiums. One report reveals that limitations on medical malpractice awards produced payout averages 15.7% lower than those of states without caps between 1991 and 2002. This statistic is true despite the fact that many of the states did not institute the limitations until near the end of the reporting period. Meanwhile, the median annual premium in states with caps increased an alarming 48.2%. Surprisingly, the median annual premium in states without caps

increased more slowly: by 35.9%. In other words, the median medical malpractice insurance premiums were actually higher in states with caps. This is contrary to the goal of the limitations on medical malpractice awards.

Some Positive Aspects of Tort Reform

The goal of tort reform is to reduce jury awards for medical malpractice law suits. This reduction of excessive jury award would, in turn, allow medical malpractice insurance companies to reduce their excessive premiums. This logic is based on the theory that insurance companies would pay less money on doctors' insurance claims because juries would award plaintiffs less money. Then, the lower insurance premiums would lead to a larger quantity of good doctors entering and/or remaining in the health field, no longer fearing extreme insurance premiums.

To an extent, this logic may be true. According to a recent article in the New York Times, physicians are flooding into Texas because of the state's approval of a constitutional amendment limiting medical malpractice awards. Further, physicians noticed that the state of Texas experienced an average 21.3% decrease in medical malpractice insurance premiums during the four years following the tort reform legislation.

States with the Biggest Positive Impacts

Texas: Texas has become the shining star for tort reform. Litigation, paid claims, and premiums have been cut in half after constitutional reforms were passed in 2003. Applications for Texas licenses have surged and the malpractice payout per capita is now the one of the lowest in the country.

Ohio: Litigation has dropped 41% statewide over the years following the enactment of transformative reforms in 2004.

Pennsylvania: Reforms were passed in 2003, including (1) a case certification requirement, and (2) venue reform. In the last 10 years, medical malpractice case filings have decreased 44% in the state (and they're down 65% in Philadelphia).

Mississippi: Since passing strong reforms in 2004 (a hard \$500,000 cap on non-economic damages and a case certification requirement), liability insurance costs have dropped nearly 50 percent and the number of lawsuits have fallen 70 percent.

North Carolina: The state enacted reforms in 2011 (a \$500,000 cap on non-economic damages and an enhanced burden of proof for health care providers). North Carolina's per capita malpractice payout is now the fifth lowest in the nation.

Summary from The National Practitioner Data Base:

Highest 10 states

State	Per Capita Pay Out	Cap Structure
NY	\$31 per resident	None
RI	\$30 per resident	None
NJ	\$30 per resident	\$350k punitive damage only
CT	\$29 per resident	None
PA	\$29 per resident	None
IL	\$23 per resident	\$500k non-economic damages only
NH	\$23 per resident	None
WV	\$20 per resident	\$250k non-economic damage only
ME	\$20 pp	None
HI	\$18 per resident	\$375k non-economic damages only

Lowest 10 states

WI	\$2 per resident	\$750k non-economic damages only (currently under review)
SD	\$2 per resident	\$500k non-economic damages only
VT	\$2 per resident	None
MN	\$3 per resident	None
NC	\$4 per resident	\$500k non-economic damages only
TX	\$4 per resident	\$250k non-economic damages only
ND	\$5 per resident	\$500k non-economic damages only
AL	\$5 per resident	None
CO	\$6 per resident	\$1mm total cap. \$300k non-economic damages
MS	\$6 per resident	\$500k non-economic damages only

As the data illustrates, it is our opinion that there is no clear hard cause and effect for implementing caps on damages in most situations. Most of the state to state differences are socio-economic and not legislated in.

We will all stay tuned.

