

Keeping Healthcare Within Reach by Guarding Against the Erosion of Medical Liability Protections

States across the country continue to target medical liability laws, placing access to comprehensive healthcare at risk. Many of these efforts are being led by personal injury lawyer associations, both in the form of legislation and at the ballot box.

As we are halfway through the legislative year, TDC Group is tracking more than **6,700** bills in different states, many of which are two-year bills that carried over from last year. **More than 60 make up our highest priority list, and receive our greatest advocacy efforts.**

Outlined below are key highlights:

- **California:** Legislation was defeated that would have expanded the definition of neglect for elder care abuse statutes to be applied broadly to care for any elder patient, effectively skirting MICRA's cap on damages.
- **Colorado:** The Coloradans Protecting Patient Access (CPPA) coalition negotiated a legislative resolution (HB 1472) to thwart ballot measures being pursued by the Colorado Trial Lawyers' Association (CTLA). The legislation was signed by the Governor on June 3, 2024 and the ballot measures were withdrawn. The CTLA ballot measures would have 1) eliminated all caps on noneconomic damages in wrongful death and personal injury cases with few exceptions, and 2) effectively gutted protected peer review.
- **Florida:** Compromise legislation was introduced by our coalition that would have mitigated the effect of expanding wrongful death recovery in medical malpractice cases by re-enacting a cap on medical liability damages. The legislation failed which meant that fortunately, wrongful death was not expanded and, unfortunately, caps were not reinstated.
- **Idaho:** We worked with allies to establish the Idaho Healthcare Access Amicus Committee to address a recent court decision that greatly expands recklessness as a cause of action that evades Idaho's medical malpractice damage cap.
- **Maryland:** After a hard-fought advocacy effort, the repeal of Maryland's general noneconomic damages cap died during the final moments of this year's legislative session. While the medical malpractice noneconomic damages cap was not part of the bill, we worked to defeat this bill because it was clear that if it had passed into law, medical liability was next on the legislature's agenda, and the broader bill would have had an impact on general liability for healthcare practices.
- **Montana:** A prominent trial attorney is seeking to overturn the cap on noneconomic damages in medical malpractice cases by appealing *Zahara v. Advanced Neurology Assoc.* to the Montana Supreme Court. We are working with a coalition to file an amicus brief in defense of the cap, and to prepare for the 2025 legislative session.
- **New York:** The Grieving Families Act, intended to expand the pool of beneficiaries and categories of recoverable damages in wrongful death claims, was incorporated into the New York Senate's proposed annual state budget. After strenuous advocacy against the idea, the provision was removed from the budget. However, additional legislation has recently passed the legislature and we are urging the Governor to veto this harmful bill.
- **Virginia:** Legislation was defeated that would have removed the state's cap on medical liability damages where the alleged malpractice involved a patient 10 years of age or younger.



Keeping Healthcare Within Reach by Guarding Against the Erosion of Tort Reforms

BY THE NUMBERS (as of 6/15/2024)

195,449
bills were introduced
(Federal and State combined)

6,749
of those have been
identified as impactful to
TDC Group or our members

61
considered highest
priority

Additionally, we are tracking
75 court cases as of the
beginning of 2024, excluding
legal challenges involving
reproductive health laws
which are tracked separately.



This report is divided by state and current status categories as follows:

Enacted



Pending



Dead



Withdrawn



LEGISLATIVE AND JUDICIAL HOTLIST

Following are brief summaries of a selection of public policy proposals on our priority advocacy list.



California

DEAD

CA AB 2800 - Elder Abuse

This bill would have expanded the definition of neglect to include failure to implement a treatment plan, failure to provide or arrange for necessary services, and carelessness that could be expected to result in serious physical injury, mental suffering, or death. The bill also would have lowered the evidentiary standard for determining elder abuse, neglect, or abandonment from clear and convincing evidence to a preponderance of evidence. The drafting of this bill effectively allowed cases involving elders to evade the state's MICRA protections.

TDC Position: Oppose

Colorado

DEAD

CO SB 62 - Prohibit Attorney Fees on Personal Injury Interest

Beginning July 1, 2024, the bill prohibits a plaintiff's attorney from collecting attorney contingency fees on the nine percent prejudgment interest on damages awarded to their clients. This bill was part of CPPA's efforts to encourage negotiations around the ballot measures put forth by the CTLA.

TDC Position: Support

CO SB 130 - Noneconomic Damages Cap Medical Malpractice Actions

This bill proposed an increase to the cap on noneconomic damages in medical malpractice actions from \$300,000 to \$500,000 over five years (by January 1, 2030). This bill was part of the healthcare coalition effort to encourage negotiation with the Colorado Trial Lawyers Association.

TDC Position: Oppose

Note on CO Ballot Initiatives: In addition to the ballot measures listed below, the Colorado Trial Lawyers' Association (CTLA) filed multiple additional initiatives, each slightly different, to ensure that their goals were achieved if a ruling by the courts had caused one or more of their initiatives to be disqualified. If a compromise had not been reached, we expected at least one initiative to remove caps on damages and one initiative to eliminate peer review protections to qualify and appear on the November election ballot.

All ballot measures were withdrawn as a result of compromise legislation having been enacted (CO HB24-1472).

WITHDRAWN

CO Ballot Initiative #149 - Disclosure of Adverse Medical Incidents to Patients

Initiative #149 requires that a patient and their representatives have a right to access any medical record, medical information, or medical communication made or received during the patient's evaluation or treatment by a healthcare institution or healthcare professional if it relates to an "adverse medical incident" that caused or could have caused injury or death of the patient. This new right is in addition to any other similar rights currently provided in law.

TDC Position: Oppose

CO Ballot Initiative #150 - Damages Involving Catastrophic Injury or Wrongful Death

Initiative #150 provides that an injured person or their family has the right to recover, without limitation, the total amount of damages awarded by a jury or judge in a claim involving catastrophic injury or wrongful death. As written, this measure would have encompassed nearly all medical liability claims by using very broad language to define catastrophic injury.

TDC Position: Oppose

CO Ballot Initiative #170 - Limit Attorney Contingent Fees in Cases of Personal Injury & Wrongful Death

Initiative #170 limits the total attorney's fees for representing a client in a personal injury or wrongful death to 25% of the total amount awarded to the client.

TDC Position: Support



Colorado (Cont.)

**CO Ballot Initiative #171 -
Disclosure of Litigation Costs
in Cases of Personal Injury
and Wrongful Death**

Initiative #171 requires an attorney to disclose in writing all court costs and litigation expenses for which the client will be responsible during the representation within a reasonable time after commencing legal representation. The client is not liable to the attorney if the attorney fails to substantially comply with this disclosure.

TDC Position: Support

ENACTED

CO HB24 - 1472

To avoid ballot measures that would have eliminated most caps on noneconomic damages (in healthcare and non-healthcare civil cases) and subjected medical peer review to discovery, a legislative compromise has been negotiated between the healthcare community led by CPPA and CTLA. The Doctors Company is a founding and active member of CPPA, and worked with the coalition in support of defeating the ballot measures through a legislative solution. Concurrently, a compromise was negotiated between the non-healthcare/business community and the CTLA.

This legislative compromise is the product of difficult and contentious negotiations. It resulted in removal of both side's ballot measures—preserving damage caps and protecting peer review. This bill includes the following provisions:

- For non-death medical malpractice cases, the noneconomic damages cap will increase from \$300,000 to \$875,000 over five years, then adjusted for inflation every two years thereafter.
- For medical malpractice wrongful death cases, a new cap that culminates at \$1,575,000 after five years, then adjusted for inflation every two years thereafter.

- The “soft” cap on total damages in medical negligence cases is proportionately adjusted so that the new noneconomic damages caps moved along with total “soft” cap.
- Limited retroactivity was negotiated for non-death medical negligence claims arising after Jan. 1, 2024.
- Limited expansion of plaintiffs who may bring a wrongful death claim. Beginning January 1, 2025, siblings of the deceased may bring a wrongful death action, but only if at the time of the deceased's passing there is no one else available to bring the claim under the Wrongful Death Act. This means there is no spouse, heirs, or designated beneficiaries, or if the deceased was a minor without descendants or an unmarried adult without descendants, there are no parents.

TDC Position: Support

Florida

DEAD

**FL SB 248 - Medical
Negligence**

For several years now, the Florida legislature has sought to expand the class of plaintiffs who may be awarded damages in a wrongful death claim by allowing adult children to recover damages for lost parental companionship, instruction, guidance and for mental pain and suffering from the date of injury. This legislation also sought to allow the parents of adult children to recover for mental pain and suffering from the date of injury in an adult child's medical negligence claims.



Florida (Cont.)

When this legislation was reintroduced during the 2024 legislative session, TDC Group, working in conjunction with a broad coalition, was able to secure amendments to the bill to include language that would have reinstated a cap on non-economic damages for medical malpractice cases. This legislation failed to progress, and though it had bipartisan support, it also had bipartisan opposition, particularly from incoming legislative leadership that could not be overcome.

TDC Position: Support As Amended

FL SB 476 - Civil Liability for the Wrongful Death of an Unborn Child

This bill would have allowed parents of an unborn child to recover damages for mental pain and suffering from the date of injury. It also would have allowed for the recovery of medical or funeral expenses by a survivor who has paid them, including each parent of an unborn child. TDC Group opposes any expansion of liability for healthcare practitioners.

TDC Position: Oppose

Idaho

Stiefel v. Shiflett

This is a case being appealed to the Idaho Supreme Court on the issue of what conduct constitutes willful and recklessness in a medical malpractice case. This case involves an emergency department physician who allegedly failed to timely treat a patient for stroke. The facts of this case appear to be negligence, but it was determined by the jury to be reckless. This is significant because a determination of recklessness pierces the cap on noneconomic damages. TDC Group is a founding member of the Idaho Healthcare Access Amicus Committee which has filed a friend of the court brief in this case.

Iowa

DEAD

IA HSB 504 / IA SSB 3028 - Phantom Damages

This bill sought to amend the state's statutes relating to recoverable damages and admissible evidence for medical expenses in personal injury actions. It proposed that recoverable medical expenses shall not exceed the sum of the amounts paid for medical care already rendered and future medical care that the claimant will receive. In addition, the bill provided that evidence to prove future medical care shall be calculated by

providing the amounts for which the charges of the healthcare providers could be satisfied if submitted to the claimant's health insurance, regardless of whether that health insurance will be used.

TDC Position: Support

IA HSB 511 / SSB 3011 - Prohibits Damage Cap Disclosure to Jury, Types of Damages Evidence

This bill sought to prohibit the jury from being informed of a damages cap applied by the court after a verdict is rendered in medical malpractice cases, expand the disclosure available to the jury of actual economic losses as from the injury to also include past lost wages, future loss of earning capacity, workers' compensation, and disability benefits, and prohibit disclosure of the newly enacted damages caps to the jury applied by the court after a verdict is rendered in commercial motor vehicle tort cases.

TDC Position: Support

IA HF 2127 / SF 2035 - Statute of Repose in Medical Liability Claims

This bill sought to amend the statute of repose for medical malpractice claims. Under current law, medical malpractice claims are subject to a two-year statute of limitations and six-year statute of repose and bars actions brought more than six years after the date of the act or omission alleged to have been the cause of the injury or death but exempts from the statute of repose cases where a foreign object was unintentionally left in the body and caused the injury or death. The bill proposed a second exception to the six-year statute of repose. Under the bill, if the cause of the injury or death was concealed from the person by the physician and surgeon, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, physician assistant, nurse, or hospital, or their staff, the six-year statute of repose does not apply.

TDC Position: Monitor



Maryland

DEAD

MD HB 83 / MD SB 538 - Damage Cap Repeal

The bill would have repealed the state's cap on noneconomic damages in civil actions for personal injury or wrongful death; medical malpractice related claims are currently exempt from the bill. TDC Group was part of a larger coalition that actively and aggressively advocated against this legislation.

TDC Position: Oppose

Michigan

Chatman v. Owens

This is a case in the Michigan intermediate level court of appeals that challenges the state's cap on noneconomic damages. The jury in this case awarded \$2.88 million in noneconomic damages and no economic damages for a heating pad burn that healed with no scarring on the plaintiff's left buttock. Plaintiff appealed the trial court's denial of plaintiff's motion to declare the cap on noneconomic damages unconstitutional. TDC Group is participating in an amicus brief to support the cap.

Minnesota

DEAD

MN HF 3506 / SF 3573 - Collateral Source Calculations and Contributory Fault Modifications

This bill would have included in the calculation of collateral sources any payments paid by the plaintiff's employer when considering deductions from the damage award. In addition, proposed changes the comparative fault recovery bar so that the plaintiff's fault is compared to the aggregate fault of all defendants together, rather than each defendant individually. Apportioning damages among two or more persons liable for the same injury under this proposed change would have provided that a person whose fault is 50 percent or more shall be jointly and severally liable for an entire damage award, rather than greater than 50 percent in current law.

TDC Position: Oppose

Mississippi

DEAD

MS HB 950 - Noneconomic Damages for Catastrophic Injuries or Illnesses

This proposal would have increased the amount of damages available and added a "catastrophic injury" exception. "Catastrophic injury or illness" is defined in the bill as various severe bodily impairments, such as spinal cord injuries, amputations, severe brain or closed-head injuries, severe burns, blindness, and others. Under current Mississippi law, non-economic damages are limited to a \$500,000 cap on non-economic damages in actions filed on or after September 1, 2004, for injuries based on medical malpractice or breach of standard of care against a provider of healthcare, including institutions for the aged or infirm, and a \$1,000,000 cap on noneconomic damages in all other actions filed on or after September 1, 2004. The amendment proposed that in any civil action involving catastrophic injury, illness, or death filed on or after January 1, 2024, the plaintiff could be awarded up to \$3,000,000 for noneconomic damages.

TDC Position: Oppose

New Hampshire

PENDING

NH SB 462 - Removing the Cap on Damages for Wrongful Death Loss of Consortium Claims

Beginning January 1, 2025, this bill would eliminate the \$150,000 cap on damages awarded to a surviving spouse in a wrongful death case for loss of comfort, society, and companionship. It would also eliminate the \$50,000 cap that may be awarded to the minor child or children of a deceased parent in a wrongful death case for loss of familial relationship. TDC Group is working with a coalition in opposition to this legislation and requested a veto from the governor.

TDC Position: Oppose



New Jersey

PENDING

NJ A 1640 / NJ S 54 - Affidavit of Merit in Medical Liability Suits

This bill would require a plaintiff to obtain an affidavit of merit in a malpractice suit against an enrolled agent, by adding enrolled agents to the list of professionals covered under existing law.

TDC Position: Support

NJ A 2652 - Noneconomic Damages Caps: New and Narrow Application

Creates the "Medical Philanthropy Act" and provides physicians who provide uncompensated care with a \$250,000 cap on noneconomic damages in actions alleging medical malpractice.

TDC Position: Support

NJ A 2654 - Noneconomic Damages Caps: New and Narrow Application

Creates the "Addiction Medicine Philanthropy Act" and provides physicians who provide uncompensated care for treatment of substance use disorders with a \$250,000 cap on noneconomic damages in actions alleging medical malpractice.

TDC Position: Support

NJ A 2658 - Noneconomic Damage Cap for Pain and Suffering

This bill limits the noneconomic damages to \$250,000 when a healthcare provider has liability to an injured plaintiff for pain and suffering in a medical malpractice action.

TDC Position: Support

New York

ENACTED

NY A 8807 - State Budget/ Section 18 Funding

This bill contains the major components of legislation necessary to implement the state's health and mental hygiene budget for the 2024-2025 state fiscal year, including the Section 18 funding. The original proposed language for Section 18 funding bifurcated the appropriation over two years, but was removed from the final budget after we advocated against the change. Section 18 funding remains intact without a change to the formula.

TDC Position: Support Funding; Oppose Change in Formula

Ohio

PENDING

OH HB 179 - Vicarious Liability and Statute of Repose

This bill amends vicarious liability in tort actions and provides that the tolling of the limitations period during the defendant's absence or concealment does not apply to statutes of repose. TDC Group worked with the author and our partners at the medical society and hospital association to ensure the amendment to the underlying law was not overly broad.

TDC Position: Monitor



Virginia

DEAD

SB 493 - Medical Malpractice; Limitations on Recovery in Certain Actions

This bill would have removed the state's cap on damages where the alleged malpractice involved a patient 10 years of age or younger. This change would have taken effect on July 1, 2024. Virginia has a total cap on damages, meaning both economic and non-economic damages are subject to the limitations of the cap. TDC Group worked with a broad coalition to defeat this bill, providing bill analysis, data, grassroots support, and direct lobbying.

TDC Position: Oppose

Washington

DEAD

WA SB 5059 - Prejudgment Interest

This bill would have changed the law that awards a plaintiff interest from the date that judgment is entered to the date that the alleged injury occurred. TDC Group is part of a coalition that worked to defeat this bill.

TDC Position: Oppose

West Virginia

DEAD

HB 5067 - Statute of Limitations For Minors

This legislation would have extended the statute of limitations for minors and raise the age of what is considered a minor. Currently, a cause of action for an injury to a minor who was under the age of 10 at the time of injury must be commenced within two years of the date of the injury, or prior to the minor's 12th birthday, whichever is longer. The bill would have changed the age of a "minor" from under 10-years of age to under 18-years of age, and allowed a claim to be filed for injuries incurred while a minor to within five years after the minor turns 18-years of age. TDC Group has recruited other healthcare interests to help oppose this legislation.

TDC Position: Oppose

WV HB 5316 - Medical Malpractice Insurance

This bill would have removed services related to abortion, euthanasia, gender-affirming hormone therapy, surgeries, or medical care provided in support of such services from the protections of the state's medical practice act, exposing providers of such services who are found liable for damages exposed to unlimited damages. TDC Group opposes any expansion of liability for healthcare practitioners.

TDC Position: Oppose

The Doctors Company has a dedicated Government Relations team to advocate for our members to advance and defend medical liability reforms, safeguard patient access to care, and protect against legislation that would adversely impact our members across the country.

For additional information, please visit thedoctors.com/advocacy.

