

Caps on Medical Malpractice Awards
American Bar Association Standing Committee on Medical Liability
January 2005

President Bush has made it a priority in his second administration to enact federal legislation that would limit the amount an injured plaintiff can recover for non-economic damages in medical malpractice lawsuits, i.e., those damages awarded based on pain and suffering. Supporters of this approach, including the American Medical Association, argue that placing caps on these awards will lead to reductions in doctors' malpractice insurance premiums.

The ABA strongly refutes any such contention because neither empirical data nor experience with tort reform efforts within the states in the past have shown any established link between limiting non-economic damages and affordability of malpractice insurance policies. In fact, not even data provided by the AMA in June 2004 supports the notion that placing caps on damages can avert a medical malpractice crisis in a particular state, or that states that fail to enact caps are certain to have a crisis.

For example, the attached chart demonstrates that:

- eight states listed by the AMA as “in crisis” (Florida, Massachusetts, Mississippi, Missouri, Nevada, Ohio, Texas and West Virginia) have already enacted caps on non-economic damages awards.
- Fourteen other states with such caps are, according to the AMA, “showing problem signs.”
- Just six of the states that have enacted caps are considered by the AMA to not be “in crisis” or “showing problem signs.”

| States in Crisis with Non-economic and/or Total Damage Caps: | Amount of Caps |
|---|---|
| Florida | For physicians, \$500,000 non-economic; non-practitioners, \$750,000 non-economic. Increases to \$1 million in non-economic damages for physicians if result was death or permanent vegetative state. |
| Massachusetts | \$500,000 non-economic with exceptions for certain severe catastrophic cases. |
| Mississippi | \$500,000 non-economic per plaintiff. |
| Missouri | \$350,000 non-economic adjusted annually for inflation; as of 2002 = \$565,000. |
| Nevada | \$350,000 non-economic with certain exceptions. |
| Ohio | Non-economic damages of the greater of \$250,000 or three times economic damages up to a max of \$350,000 per plaintiff or \$500,000 if multiple plaintiffs. Catastrophic max may increase to \$500,000 per plaintiff or \$1 million for multiple plaintiffs. |
| Texas | \$250,000 non-economic for judgments against physicians and health care providers; additional \$250,000 non-economic against first health care institution; \$250,000 non-economic against any subsequent health care institution. |
| West Virginia | \$250,000 non-economic adjusted annually for inflation but cannot exceed \$375,000. \$500,000 non-economic for certain catastrophic cases adjusted annually for inflation but cannot exceed \$750,000. |

| States in Crisis with Punitive Caps: | |
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| Georgia | \$250,000 punitive. |
| New Jersey | \$350,000 or five times compensatory damages for punitive damages, whichever is greater. |
| Pennsylvania | Punitive caps of 2 times actual damages. |

| States in Crisis Without Caps: | |
|---------------------------------------|--|
| Arkansas | |
| Connecticut | |
| Illinois | |
| Kentucky | |
| New York | |
| North Carolina | |
| Oregon | |
| Washington | |
| Wyoming | |

| States Showing Problem Signs with Non-economic and/or Total Damage Caps: | |
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| Alaska | \$400,000 non-economic or \$8,000 multiplied by injured party's life expectancy, whichever is greater. For severe cases, limits are the greater of \$1 million or life expectancy multiplied by \$25,000. |
| Hawaii | \$375,000 non-economic with exceptions for certain damages. |
| Idaho | \$250,000 non-economic, adjusted annually for inflation based on average state wage increase. |
| Kansas | \$250,000 non-economic. |
| Maine | \$400,000 non-economic in wrongful death. |
| Maryland | \$500,000 non-economic increased annually by \$15,000; as of 2002 = \$620,000. In wrongful death with 2 or more claimants or beneficiaries, non-economic may be up to 150% of the limit. |
| Michigan | \$280,000 non-economic adjusted annually for inflation; as of 2003 = \$359,000. In catastrophic cases, non-economic shall not exceed \$500,000; as of 2003 = \$641,000. |
| Montana | \$250,000 non-economic. |
| Nebraska | \$1.75 million for total damages. Health care providers who qualify under Hospital-Medical Liability Act shall not be liable for more than \$200,000 in total damages. |
| North Dakota | \$500,000 non-economic. Economic damages awards above \$250,000 are subject to judicial review for reasonableness. |
| Oklahoma | \$300,000 non-economic adjusted for inflation if there is an offer of judgment. Separate cap of \$300,000 non-economic for cases involving OB or ER care. |
| South Dakota | \$500,000 non-economic. |
| Utah | \$250,000 non-economic, indexed for inflation. For causes of action arising on or after 7/1/01 but before 7/1/02 limit increased to \$400,000. Limit adjusted annually for inflation thereafter. |
| Virginia | \$1.5 million cap on total damages. After 8/1/99 increased annually by \$50,000 until 2007. In 2007 and 2008, increased by \$75,000 each year. |

| States Showing Problem Signs without Caps: | |
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| Alabama | |
| Arizona | |
| Delaware | |
| District of Columbia | |
| Iowa | |
| Minnesota | |
| New Hampshire | |
| Rhode Island | |

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| South Carolina | |
| Tennessee | |
| Vermont | |

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| States Currently Okay with Caps: | |
| California | \$250,000 non-economic. |
| Colorado | \$300,000 non-economic. \$1 million on total damages. |
| Indiana | \$1.25 million for any act of malpractice. Health care providers not liable for more than \$250,000. Compensation Fund pays the rest up to the cap. |
| Louisiana | \$500,000 total damages excluding damages recoverable for future medical care. Health care providers covered by Patient's Compensation Fund not liable for more than \$100,000. Compensation Fund pays the rest up to the cap. |
| New Mexico | \$600,000 on total damages, excluding punitive and past and future medical care. Health care providers personal liability not exceed \$200,000. Compensation Fund pays the rest up to the cap. |
| Wisconsin | \$350,000 non-economic adjusted annually for inflation; as of 2003 = \$410,000. \$350,000 non-economic for wrongful death and \$500,000 non-economic for minors. |