

**Fact Sheet: Summary of Surrounding State Legislation Related to Medical Liability Reform**

State	Damage Caps	Joint Liability Reform	Collateral Source Reform	Attorney Fees Limited	Periodic Payments Permitted	Arbitration/Mediation and Pre-Trial Screening Panels	Expert Testimony & Qualifications	Certificate of Merit	Statute of Limitations
<b>Colorado</b>	\$300,000 cap on noneconomic damages, including damages for physical impairment and disfigurement \$1,000,000 cap on total damages. (CRS §13-64-302)	Yes. Defendants are responsible only for their proportionate share of negligence unless persons have consciously conspired and deliberately pursued a common plan or design to commit a tortious act. (CRS §13-21-111.5)	Yes. In any action by any person or his legal representative to recover damages for a tort resulting in death or injury to person or property, the court, after the finder of fact has returned its verdict stating the amount of damages to be awarded, shall reduce the amount of the verdict by the amount by which such person, his estate, or his personal representative has been or will be wholly or partially indemnified or compensated for his loss by any other person, corporation, insurance company, or fund in relation to the injury, damage, or death sustained; except that the verdict shall not be reduced by the amount by which such person, his estate, or his personal representative has been or will be wholly or partially indemnified or compensated by a benefit paid as a result of a contract entered into and paid for by or on behalf of such person. (CRS §13-21-111.6)	None identified.	Yes. Mandatory for awards of future damages greater than \$150,000. Discretionary for damage awards \$150,000 or less. (CRS §13-64-203)	Arbitration is not mandated but is permitted. (CRS §13-64-403)	Experts must be licensed to practice in the state and be substantially familiar with the applicable standards of care and practice as they relate to the act or omission which is the subject of the claim on the date of the incident. The court shall not permit an expert in one medical subspecialty to testify against a physician in another medical subspecialty unless the expert shows substantial familiarity between the specialties and that the standards of care and practice in the two fields are similar. The limitations in this section shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment. (C.R.S. § 13-64-401)	A certificate of review must be filed by the plaintiff or his attorney within 60 days after a complaint is served. The certificate must state that an expert was consulted, and the expert is competent to express a medical opinion on the case at issue. Failure to file a certificate will result in dismissal of the claim. (C.R.S. § 13-20-602)	Medical malpractice: within two years of the date when the alleged negligent act took place, and when its cause is known or should have been known. In no case may a claim be brought more than three years after the cause that gave rise to the action is known, unless the act or omission: was knowingly concealed; involved leaving a foreign object in the body; or both the act and injury otherwise could not have been discovered through the reasonable exercise of due diligence. Minors: minors under the age of 6 on the date of the alleged act or omission, must file an action before his or her eighth birthday. Mentally incompetent or legally disabled: within two years of the discharge of disability status or within the applicable statute of limitations, whichever is later. Wrongful death: within two years of the date of death. (CRS §§ 13-80-102, 13-80-102.5, 13-81-103)
<b>Idaho</b>	\$250,000 cap on noneconomic damages per claimant in all personal injury and wrongful death actions. Cap will be adjusted annually beginning on July 1, 2004 based on the average state wage increase. Cap does not apply to willful or reckless conduct or felonious acts. (Idaho Code §6.1603)	Yes. Defendants are responsible only for their proportionate share of negligence, except where co-defendants were acting in concert or a person is an agent or servant of a party. (Idaho Code §6.801 through 807)	Yes, collateral sources may be submitted to the judge following the verdict. Judgments may be entered only for amounts that exceed recovery from collateral sources. (Idaho Code § 6.1606)	None identified.	Yes, upon the request of either party, at the discretion of the court, and only in personal injury cases, where damages exceed \$100,000. May not be ordered for intentional torts, gross negligence or an extreme deviation from reasonable standard of conduct. (Idaho Code § 6.1602)	Arbitration is permitted but not required. (7-901) Informal and nonbinding pre-trial screening panels are mandatory. Hearing Panels are appointed by the Board of Medicine and shall include a physician, attorney, and layperson agreed to by the panelists. In cases involving hospitals a hospital administrator shall also be appointed to the panel. (Idaho Code §§ 6.1001 through 6.1011)	To establish medical malpractice, the plaintiff must affirmatively prove by direct expert testimony and by a preponderance of all the competent evidence, that such defendant negligently failed to meet the applicable standard of care. The expert must possess professional knowledge and expertise coupled with actual knowledge of the applicable community standard to which his or her expert opinion testimony addresses. (Idaho Code §§ 6-1012, 6-1013)	None identified.	Medical malpractice: within two years from the time of the occurrence of the wrongful act or omission at issue. Foreign objects: within two years of when the claimant became aware of the injury, or one year following the date of the accrual, whichever is later. (Idaho Code § 5-219)

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Montana	\$250,000 cap on noneconomic damages (Mont. Code Ann. § 27-9-411)	Any party whose negligence is 50% or less of the combined negligence of all persons is severally liable only. The remaining parties are jointly and severally liable for the total less the amount attributable to the claimant. A party may be jointly liable for all damages caused by the negligence of another if both acted in concert or if one party acted as an agent of the other. (Mont. Code Ann. § 27-1-703 et seq)	Yes, in cases where damages exceed \$50,000. Total damages must be reduced by amount of prior payment from collateral sources that do not involve rights of subrogation. (Mont. Code Ann. § 27-1-308)	None identified.	Yes. Upon any party's request, the court must enter an order for periodic payment of future damages exceeding \$50,000. (Mont. Code Ann. § 25-9-412)	Claimants must submit all malpractice claims or potential malpractice claims filed against health care providers to the panel prior to filing a complaint. Six members shall sit on the panel, including three attorneys and three providers from the same profession as the defendant (i.e. if the defendant is a physician, three physicians). The panel must decide whether there is substantial evidence that the acts complained of occurred, that they constitute malpractice, and whether there is a reasonable probability that the patient was injured thereby. The panel's decision must be in writing, but is not binding on any party. The panel's decision is not admissible in court, and no member of the panel may be called to testify at a subsequent trial. The panel may recommend an award, as well as discuss and approve settlement agreements. (Mont. Code Ann. Title 27, Chapter 6)	If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. (Title 26, Chapter 10, part VII, Rule 702)	No	Actions for injury or death based on alleged professional negligence shall be filed within three years of the date of the alleged negligence or the date when the negligence should have reasonably been discovered. No claims may be brought more than five years after the alleged negligence occurred. Minors under four: statute is tolled until the eighth birthday, or death, whichever is earlier, or during any period the child does not reside with a parent or guardian. (Mont. Code Ann. § 27-2-205)
Nebraska	\$1.75 million in total damages; less depending upon date of occurrence is the maximum amount recoverable under the Excess Liability Fund. 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. Health care providers are not obligated to be covered under this program. (RRS Neb. § 44-2825; operative in January 2005)	Yes. Defendants are responsible only for their proportionate share of negligence, except where parties have acted in concert and caused harm as part of a common enterprise or plan. (RRS Neb. § 25-21,185.10)	Yes. The court shall determine in a separate hearing the amount of any credit against a claimant's damages based on any non-refundable insurance benefits reimbursed to the claimant. This information, however, is not admissible as evidence. (RRS Neb. § 25-1222.01)	No, but upon motion of either party, the court must review and determine reasonableness of fees. (RRS Neb. § 44-2834)	None identified.	A medical review panel shall provide their expert opinion as to whether the defendant failed to meet the standard of care, or if there is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court or jury. The panel shall consist of three physicians and one non-voting attorney who shall chair the panel. Each party to the action shall select one physician and these physicians shall agree on a third physician to sit on the panel. A fourth member shall be added in cases involving hospitals. The decision by a majority of the members of the panel shall be submitted to the court in writing. Either party may request a copy of the minority report if one exists. The majority and minority report may be submitted as evidence and any member of the panel may be called as a witness. (RRS Neb. §§ 44-2840 through 44-2847)	Expert testimony is required to establish a prima facie case of negligence in common law. (No specific statutory cite identified abrogating or further defining these principles.)	No	Medical malpractice: within two years after the act/omission giving rise to the action, or within one year after the claimant discovered/should have discovered the act/omission. Ten year statute of repose. (RRS Neb. § 44-2828) Under age 21: statute is tolled until claimant reaches age 21. (RRS Neb. § 25-213) Mental disorder: Statute is tolled until the disorder is removed. (RRS Neb. § 25-213)

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North Dakota	\$500,000 cap on noneconomic damages. Economic damage awards in excess of \$250,000 are subject to judicial review for reasonableness. (ND Cent. Code §§ 28-01-46 and 32-03.2-08)	Yes. Defendants are responsible only for their proportionate share of negligence except where defendants act in concert in committing, aiding and encouraging, or ratifying or adopting a tortious act. (ND Cent. Code § 32-03.2-02)	Yes. Defendant may apply to the court for a reduction of economic damages based on collateral sources of payment. (ND Cent. Code § 32-03.2-06)	None identified.	Yes. In cases where future economic damages will be awarded for continuing institutional/custodial care lasting more than two years, a party may request periodic payments. Court has discretion to grant. (ND Cent. Code § 32-03.2-09)	Arbitration is not mandated, but parties must make a good faith effort to resolve the dispute via some sort of alternative dispute resolution prior to filing a lawsuit. (ND Cent. Code § 32-42-03)	None specific provision identified.	Expert opinions must be obtained within three months of filing a claim unless the case involves obvious malpractice. Rules do not apply to cases involving foreign objects, lack of informed consent or performing a procedure of the wrong person, body part, etc. or "obvious cases." (ND Cent. Code § 28-01-46)	Medical malpractice: within two years of the act or omission giving rise to the action, or within two years from the date the injury was/should have been discovered, but in no event more than six years after the date of injury. Minors, insane, imprisoned: statute is tolled during the disability, but for no more than five years for the insane and/or imprisoned, and not more than twelve years for a minor. Action must be brought within one year after the disability ceases. (ND Cent. Code §§ 28-01-18 and 28-01-25)
South Dakota	\$500,000 cap on total general damages (non-economic) (SD Codified Laws § 21-3-11)	No. Each party is jointly and severally liable, but parties who are allocated less than 50% of the total fault may only be jointly liable for more than 2xs the percentage of fault allocated to that party. (SD Codified Laws § 15-8-15.1)	Yes, but no evidence of payments subject to subrogation and not purchased by the claimant or paid by the government. (SD Codified Laws § 21-3-12)	None identified.	Yes. If a party makes an effective election and both parties agree or a timely objection is not filed, or if a timely objection is filed but the claimant can prove future damages are in excess of \$200,000. (SD Codified Laws §§ 21-3A-2 and 21-3A-5)	Not mandated, but permitted. Arbitration panel determines existence of liability, then gives the parties 30 days to agree on damages. If the parties fail to agree, the panel will make a determination. (SD Codified Laws § 21-25B-1 et al.)	If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. (SD Codified Laws § 19-15-2 (Rule 702)) Expert testimony must be introduced to establish negligence. (No specific cite identified abrogating or further defining principles of common law.)	None identified.	Medical malpractice: within two years from the date of the alleged malpractice. Minor – within three years after the alleged malpractice, error, mistake, or failure to cure occurred, unless the minor is less than six years of age at the time the alleged malpractice occurred then within two years after the minor’s sixth birthday. (SD Codified laws §§ 15-2-14.1 and 15-2-22.1 and 15-2-22)

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Utah	\$250,000 cap on noneconomic damages; for causes of action arising on or after 7/1/2001 but before 7/1/2002 limit increased to \$400,000. Limit adjusted annually for inflation thereafter. (Utah Code Ann. § 78-14-7.1)	Yes. Defendants are responsible only for their proportionate share of negligence.	Yes. Court must reduce damages by any collateral sources of payment received by the claimant, except for benefits from payors with subrogation rights. Reduction shall be offset by amount paid by claimant to secure such benefits. (Utah Code Ann. § 78-14-4.5)	Yes. Total compensation may not exceed 1/3 of total damages. (Utah Code Ann. § 78-14-7.5)	Yes. Any party may request periodic payments, and the court must order such payments if future damages exceed \$100,000. (Utah Code Ann. § 78-14-9.5)	Arbitration agreements between a patient and health care provider are valid and enforceable if developed under the statutory provisions. ((Utah Code Ann. § 78-14-17) Claimants may request a pre-litigation hearing. The panel conducting the hearing shall include a lawyer, health care provider who is practicing and knowledgeable in the same specialty as the proposed defendant, a lay person, and if the claim is against only a hospital or their employees a hospital administrator. The panel shall issue a written opinion whether the claim(s) against the defendant(s) has merit or no merit, and if a claim is determined to have merit, whether the conduct resulted in harm to the claimant. The panel's decision shall not be subject to judicial review or appeal and their decision shall not be admissible as evidence in any subsequent action. Members of the panel may also not be called to testify. The panel's decision may be binding if agreed to in writing by the parties. ((Utah Code Ann. § 78-14-12 through 78-14-16)	Expert testimony must be presented to establish a deviation below the standard of care, unless the facts are knowledgeable to a lay person. (No specific statutory cite identified.)	None identified.	Medical malpractice: within two years of the date the injury was/should have been discovered, but in no event more than four years after the negligent act. Foreign object: within one year from the date the object was/should have been discovered (four year limit does not apply). Minors/disabled: minors or individuals disabled and without a legal guardian are not subject to above limits. (Note: Limits on minors declared unconstitutional.) (Utah Code Ann. §§ 78-14-4 and 78-12-36)
Wyoming	None.	Yes. Defendants are responsible only for their proportionate share of negligence. (W.S. 1-1-109)	None.	Yes, when recovery is \$1 million or less as follows: 33 1/3% if claim is settled prior to or within 60 days after filing; 40% if claim is settled more than 60 days after filing or upon judgment. If recovery is more than \$1 million, 30% of recovery in excess of \$1 million is considered reasonable. (Rule 5 of the Rules Governing Contingent Fees for Members of the Wyoming State Bar.	Not mandated.	Arbitration permitted but not required. (W.S. 1-36-101 et seq)	None specifically required.	No	Medical malpractice claims must be brought within two years from the alleged act, error, or omission. If the claimant can prove the alleged act, error, or omission was not discoverable within a two year period, or failed to discover it within the two years despite due diligence then the cause of action must be brought within two years from the date of discovery. (if act discovered during the 2 <sup>nd</sup> year of the two year period from the date of the act, the statute of limitations shall be extended six months). Minor: must be brought before minor's eighth birthday or as above, whichever is greater. Disabled: within one year from the removal of the disability. (Wyo. Stat. 1-3-107)