



WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

10 RM 005

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Re: Medical Malpractice Noneconomic Damage Limits

QUESTIONS

1. What provisions have other states enacted to limit noneconomic damages?
2. What impact do limits on noneconomic damages have on medical malpractice premiums?

ANSWERS

1. Using information compiled by the National Conference of State Legislatures (NCSL), Table 1 summarizes state provisions related to damage award limits or caps. Damages fall into three primary categories: (1) economic damages, such as medical costs and lost wages, (2) noneconomic damages, such as pain and suffering, and (3) punitive damages awarded with the intent of punishing a defendant for willful and wanton misconduct. Some states have established maximum awards for one or more of these categories, and some states have established maximum total awards. Table 1 *only* shows the limits on noneconomic damages and total awards; it does not include limits on punitive damages.

Table 1. State Limitations on Noneconomic Damages as of September 2009.

| State | Summary of Provisions Related to Limits on Noneconomic Damages |
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| Alaska | §09.55.549. Noneconomic damages limited to \$250,000; limited to \$400,000 for wrongful death or injury over 70 percent disabling; limits not applicable to intentional or reckless acts or omissions. |
| California | Civil Code §3333.2. \$250,000 limit for noneconomic damages. |
| Colorado | §13-64-302. \$1 million total limit on all damages; \$300,000 noneconomic limitation. |

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| Florida | §766.118. Noneconomic damages limited to \$500,000 per claimant. Noneconomic damages shall not exceed \$1 million for cases involving death or permanent vegetative state, or 1) a manifest injustice would occur unless increased noneconomic damages are awarded, based on a finding that because of the special circumstances of the case, the noneconomic harm sustained by the injured patient was particularly severe; and 2) The trier of fact determines that the defendant's negligence caused a catastrophic injury to the patient. Noneconomic damages limited to \$150,000 per claimant for cases arising from medical negligence of practitioners providing emergency services and care, the total noneconomic damages recoverable by all claimants from all such practitioners shall not exceed \$300,000. |
| Georgia | §51-13-1. Noneconomic damages in medical malpractice actions limited to \$350,000 against providers, regardless of number of defendants. Noneconomic damages limited to \$350,000 against a single medical facility; \$700,000 against multiple facilities. Aggregate amount of noneconomic damages limited to \$1.05 million. |
| Hawaii | §663-8.7. Noneconomic damages recoverable for pain and suffering shall be limited to a maximum award of \$375,000. |
| Idaho | §6-1603. \$250,000 limit on noneconomic damages, adjusted annually according to state's average annual wage. |
| Indiana | §34-18-14-3. The total amount recoverable may not exceed \$500,000. A health care provider is not liable for an amount in excess of \$250,000 for an occurrence of malpractice. |
| Kansas | §60-19a02. \$250,000 limit on noneconomic damages for personal injury recoverable by each party from all defendants. |
| Louisiana | RS §40:1299.42. \$500,000 limit for total recovery. Health care provider liability limited to \$100,000. Any award in excess of all liable providers paid from Patient's Compensation Fund. |
| Maryland | Courts & Judicial Proceedings Code §3-2A-09(A). Noneconomic damages for a cause of action arising between January 1, 2005, and December 31, 2008, inclusive, may not exceed \$650,000. The limitation on noneconomic damages shall increase by \$15,000 on January 1 of each year beginning January 1, 2009. The increased amount shall apply to causes of action arising between January 1 and December 31 of that year, inclusive. In a wrongful death action, where there are two or more claimants or beneficiaries, the noneconomic damages for all actions may not exceed 125 percent of the above limitation. |
| Massachusetts | Ch. 231 §60H. \$500,000 limit for pain and suffering, loss of companionship, embarrassment and other items of general damages unless there is a determination that there is a substantial or permanent loss or impairment of a bodily function or substantial disfigurement, or other special circumstances. Except as provided, if two or more plaintiffs have received verdicts or findings of such damages in a total amount, for all plaintiffs claiming damages from a single occurrence, transaction, act of malpractice, or injury which exceeds \$500,000, the amount of such damages recoverable by each plaintiff will be reduced to a percentage of \$500,000 proportionate to that plaintiff's share of the total amount of such damages for all plaintiffs. |

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| Michigan | <p>§600.1483. \$280,000 limit on noneconomic damages; \$500,000 limit on noneconomic damages if (a) The plaintiff is hemiplegic, paraplegic, or quadriplegic resulting in a total permanent functional loss of one or more limbs caused by one or more of the following: (i) Injury to the brain. (ii) Injury to the spinal cord. (b) The plaintiff has permanently impaired cognitive capacity rendering him or her incapable of making independent, responsible life decisions and permanently incapable of independently performing the activities of normal, daily living. (c) There has been permanent loss of or damage to a reproductive organ resulting in the inability to procreate. The limitation is adjusted annually by state treasurer according to consumer price index.</p> <p>§600.6098. A judge presiding over an action alleging medical malpractice shall review each verdict to determine if the limitation on noneconomic damages provided for in §1483 applies. If the limitation applies, the court shall set aside any amount of noneconomic damages in excess of the amount specified in §1483.</p> |
| Mississippi | §11-1-60. \$500,000 limit on noneconomic damages. |
| Missouri | §538.210. Noneconomic damages limited to \$350,000 regardless of number of defendants. |
| Montana | §25-9-411. \$250,000 limit on past and future damages for noneconomic loss. |
| Nebraska | §44-2825. Total damages limited to \$1,750,000. Health care provider liability limited to \$500,000. Any excess of total liability of all health care providers paid from Excess Liability Fund. |
| Nevada | §41A.035. \$350,000 limit on noneconomic damages. |
| New Mexico | <p>§41-5-6. \$600,000 total limit on all damages. The value of accrued medical care and related benefits shall not be subject to the \$600,000 limitation. Monetary damages shall not be awarded for future medical expenses in malpractice claims. A health care provider's personal liability is limited to \$200,000 for monetary damages and medical care and related benefits as provided in §41-5-7 NMSA 1978. Any amount due from a judgment or settlement in excess of \$200,000 shall be paid from the patient's compensation fund.</p> <p>§41-5-7. Awards of future medical care and related benefits shall not be subject to the \$600,000 limitation imposed in §41-5-6.</p> |
| North Dakota | §32-42-02. \$500,000 limit on noneconomic damages. |
| Ohio | §2323.43. No limitation on compensatory damages that represent the economic loss of the person who is awarded the damages in the civil action. Noneconomic damages shall not exceed the greater of \$250,000 or an amount that is equal to three times the plaintiff's economic loss, as determined by the trier of fact, to a maximum of \$350,000 for each plaintiff or a maximum of \$500,000 for each occurrence. Noneconomic damages may exceed the amount described above but shall not exceed \$500,000 for each plaintiff or \$1 million for each occurrence if the noneconomic losses of the plaintiff are for either of the following: (a) Permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system; (b) Permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life sustaining activities. |

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| Oklahoma | <p>23 §61.2. No limitation on the amount of noneconomic damages in a civil action arising from a claimed bodily injury resulting from professional negligence against a physician if the judge and jury finds, by clear and convincing evidence, that: 1. The plaintiff or injured person has suffered permanent and substantial physical abnormality or disfigurement, loss of use of a limb, or loss of, or substantial impairment to, a major body organ or system; or 2. The plaintiff or injured person has suffered permanent physical functional injury which prevents them from being able to independently care for themselves and perform life sustaining activities; or 3. The defendant's acts or failures to act were: a. in reckless disregard for the rights of others, b. grossly negligent, c. fraudulent, or d. intentional or with malice.</p> <p>63 §1-1708.1F-1. Except as provided, noneconomic damages awarded shall not exceed the hard cap amount of \$300,000, provided: 1. The defendant has made an offer of judgment pursuant to §1101.1 of Title 12 of the Oklahoma Statutes; and 2. The amount of the verdict awarded to the plaintiff is less than 1 1/2 times the amount of the final offer of judgment. The \$300,000 cap shall be adjusted annually based upon any positive increase in the Consumer Price Index. If nine or more members of the jury find by clear and convincing evidence that the defendant committed negligence or if nine or more members of the jury find by a preponderance of the evidence that the conduct of the defendant was willful or wanton, the limits on noneconomic damages provided above shall not apply.</p> <p>63 §1-1708.1F. In a medical liability action in which the health care services at issue were provided for: 1. Pregnancy or labor and delivery, including the immediate post-partum period; or 2. Emergency care in the emergency room of a hospital or as follow-up to the emergency care services provided in the emergency room; the amount of noneconomic damages awarded shall not exceed \$300,000. Where the judge finds by clear and convincing evidence that the defendant committed negligence in one of these types of cases, the court shall articulate its findings into the record out of the presence of the jury and shall lift the noneconomic damage cap.</p> |
| South Carolina | <p>§15-32-220. Noneconomic damages limited to \$350,000 against single health care provider or facility. In actions against more than one facility, provider or combination, the limit of civil liability for noneconomic damages for each health care institution and each health care provider is limited to an amount not to exceed \$350,000 for each claimant, and the limit of civil liability for noneconomic damages for all health care institutions and health care providers is limited to an amount not to exceed \$1,050,000 for each claimant. Limits increased or decreased annually based on Consumer Price Index. No limits on noneconomic or punitive damages if defendant is grossly negligent, willful, wanton, or reckless, and such conduct was the proximate cause of the claimant's noneconomic damages, or if the defendant has engaged in fraud or misrepresentation related to the claim, or if the defendant altered or destroyed medical records with the purpose of avoiding a claim or liability to the claimant.</p> |
| South Dakota | <p>§21-3-11. The total general damages which may be awarded may not exceed the sum of \$500,000. No limitation on the amount of special damages which may be awarded.</p> |

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| Texas | <p>Civil Practice & Remedies §74.301. \$250,000 limit per claimant for noneconomic damages against physician or provider. \$250,000 limit per claimant against single institution. For claims against multiple institutions, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$250,000 for each claimant and the limit of civil liability for noneconomic damages for all health care institutions, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$500,000 for each claimant.</p> <p>Civil Practice & Remedies §74.303. In wrongful death claims against physician, the limit of civil liability for all damages, including exemplary damages, shall be limited to an amount not to exceed \$500,000 for each claimant. The limitation will be adjusted by the Consumer Price Index.</p> |
| Utah | <p>§78B-3-410. \$400,000 limit on noneconomic damages. Adjusted annually for inflation by state treasurer.</p> |
| Virginia | <p>§8.01-581.15. \$1.5 million limit on recovery damages. Increased by \$50,000 each year from 2001 to 2006. Increased by \$75,000 each year in 2007 and 2008. The July 1, 2008, increase shall be the final annual increase.</p> |
| West Virginia | <p>§55-7B-8. \$250,000 limit for noneconomic damages per occurrence. Plaintiff may recover compensatory damages for noneconomic loss in excess of the limitation above, but not in excess of \$500,000 for each occurrence, where the damages for noneconomic losses suffered by the plaintiff were for: (1) Wrongful death; (2) permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or (3) 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. Limits are adjusted annually for inflation by the Consumer Price Index.</p> |

Source: LSO Research summary of information compiled by the National Conference of State Legislatures.

2. **Evaluating the impact of limits on noneconomic damages on medical malpractice premiums is complex because of the many variations among state health care markets, including differences in the medical malpractice insurance market. Accounting for this complexity, the Congressional Budget Office has found that limits on tort claims have reduced premiums for medical malpractice insurance.¹ Other researchers have also found that caps on noneconomic damages reduce medical malpractice premiums.² Although it appears limiting noneconomic damages lowers medical malpractice premiums, such reforms remain controversial. There is ongoing debate about the overall effect of tort reforms on health care cost and quality.**

If you need anything further, please contact LSO Research at 777-7881.

¹ Congressional Budget Office, *Medical Malpractice Tort Limits and Health Care Spending* (April 2006).

² Kenneth E. Thorpe, "The Medical Malpractice 'Crisis': Recent Trends and the Impact of State Tort Reforms," *Health Affairs*, vol. W4, pp. 20-30; Patricia M. Danzon, Andrew J. Epstein, and Scott J. Johnson, "The Crisis in Medical Malpractice Insurance," in Robert E. Litan and Richard Herring, eds., *Brookings-Wharton Papers on Financial Services* (Washington, D.C.: Brookings Institution Press), pp. 55-95.