

# State Enactments of Selected Health Care Liability Reforms

(As of 8/29/2019)

State	Limits on damages for pain and suffering	Limits on contingent attorney fees	Reform of collateral source rule	Periodic payment of future damages	Statute of Limitations
Tally	29 States have some limit on non-economic or economic damages	16 States have statutes; others reserve for judicial review	11 states have an evidentiary rule (4 ban subrogation, 3 are superseded by subrogation); 19 states have mandatory offsets (4 ban subrogation, 6 are superseded by subrogation), and 2 states leave discretion with the courts	31 States have some rule addressing periodic payment issues	Every state has some statute of limitations rule
AL	None: \$400,000 non-economic damages ruled UNCONSTITUTIONAL (2003)	None	E §6-5-545 (1987)	M when over \$150,000; constitutionality is questionable in light of cases §6-5-543 (1987)	2 yrs or 6 mo from discovery; 4 yrs maximum UPHELD §6-5-482 (1975)
AK	\$250,000 non-economic damages with exceptions to \$400,000 §09.55.549 (Effective 6/7/2005)	None	M – Bans subrogation §09.55.548(b) (1976)	D unless plaintiff requests it §9.55.548(a) (1976) §9.17.040(d) (1986)	2 yrs from discovery §09.10.070 (1997)
AZ	None (prohibited by state constitution)	None	E – Bans subrogation §12-565 (1976)	None: D ruled UNCONSTITUTIONAL	2 yrs from discovery §12-542 (1985)
AR	None (prohibited by state constitution)	None	None	M over \$100,000 at request of either party §16-114-208 (2003)	2 yrs; 1 yr FO from discovery §16-114-203 (1991)
CA	\$250,000 non-economic damages cap UPHELD Civ. §3333.2 (1975)	Sliding scale Bus. & Prof. §6146 (1987)	E – Bans subrogation Civ. §3333.1 (1975)	M over \$50,000 at request of either party Civ. Proc. §667.7 (1975)	3 yrs or 1 yr from discovery, maximum of 3 yrs; 1 yr FO Civ. Proc. §340.5 (1975)
CO	\$300,000 non-economic damages cap; total cap \$1 million (with some court discretion on total cap): UPHELD §13-64-302 (2003)	None	M §13-21-111.6 (1986)	M over \$150,000; D under \$150,000 §13-64-203 (1988)	2 years from discovery; maximum of 3 yrs; 2 yr FO §13-80-102.5 (1988)
CT	None	Sliding scale §52-251c (1987)	M §52-225a (1987)	M over \$200,000 (if both parties agree to payment plan) §52-225d (1987)	2 yrs from discovery; 3 yr maximum §52-584
DE	None	Sliding scale Ti. 18 §6865 (1975)	E – public benefits only Ti.18 §6862 (1975)	D by court Ti. 18 §6864 (1975)	2 yrs; 3 yrs from discovery; UPHELD Ti. 18 §6856 (1975)

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D.C.	None	None	None	None	3 yrs from discovery §12-301 (1963)
FL	None: \$500,000 cap on non-economic damages per claimant, max \$500,000 per defendant; \$1 million max for severe injury \$750,000 cap on non-economic damages per entity/claimant; \$1.5 million max EXCEPTIONS - \$150,000 cap on non-economic damages per emergency provider/claimant; \$300,000 max §766.118 (2003) Ruled UNCONSTITUTIONAL by State Supreme Court (6/2017)	After costs, 30% of first \$250,000, 10% of anything over \$250,000 FL Const. Art. I, Sec. 26 (Effective 11/2004)	M §768.76 (1986)	M over \$250,000 at request of either party §768.78 (1988)	2 yrs or 2 yrs from discovery; 4 yr maximum §95.11 (1975)
GA	None: \$350,000 cap on non-economic damages for all providers/claimant and \$350,000 cap per facility/claimant (maximum of \$700,000 for all facilities) up to a total of \$1.05M Ruled UNCONSTITUTIONAL by State Supreme Court 3/2010	None	None: E ruled UNCONSTITUTIONAL	M over \$350,000 at request of either party §51-13-1(f) (Effective 2/16/2005)	2 yrs; 5 yr maximum statute of repose; 1 yr FO UPHELD §9-3-71 (1985)
HI	\$375,000 for non-economic damages §663-8.7 (1986)	Court approval §607-15.5 (1986)	None	None	2 yr from discovery; 6 yr maximum §657-7.3 (1986)
ID	\$372,865 cap on non-economic damages (adjusted annually to average wage index on 7/1) §6-1603 (Effective 7/1/2004)	None	M §6-1606 (1990)	D over \$100,000 at request of either party §6-1602 (1987)	2 yr; 1 yr FO §5-219 (1971)
IL	None: \$500,000/physician and \$1 million/hospital cap on non-economic damages enacted in 2005 Ruled UNCONSTITUTIONAL by State Supreme Court 2/2010	Sliding scale §5/2-1114 (1985)	M: 50% offset of lost wages, 100% offset of medical benefits, but no more than 50% of award §5/2-1205 (1985)	D over \$250,000 by plaintiff; certain restrictions on defendant §5/2-1705 (1985)	2 yrs from discovery; 4 yr maximum §735 5/13-212 (1987)
IN	\$500,000 cap on total damages per provider; \$1.8 million cap on total damages for all providers and state fund: UPHELD §34-18-14-3 (2016)	15% max if paid out of patient compensation fund; otherwise none §34-18-18-1 (1999)	E §34-44-1-2 (1998)	None	2 yrs from act or discovery UPHELD §34-18-7-1 (1999)
IA	\$250,000 cap on non-economic damages (jury may pierce cap for severe injuries). §147.136A (2017)	Court determines §147.138 (1975)	M – Bans subrogation §147.136 (1975)	D §668.3 (1986)	2 yrs from discovery; 6 yr maximum (except for FO) §614.1 (1975)

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KS	\$325,000 cap on non-economic damages.  Ruled UNCONSTITUTIONAL (6/2019) §60-19a02 (2014)	None	None: D ruled UNCONSTITUTIONAL	None	2 yrs from discovery; 4 yr maximum §60-513 (1987)
KY	None (prohibited by state constitution)	None	None: D ruled UNCONSTITUTIONAL	None	1 yr from discovery (5 yr statute of repose found UNCONSTITUTIONAL ) §413.140 (1974)
LA	\$100,000 cap per provider/ incident, with \$500,000 cap on total damages, (difference paid by PCF), plus future medical costs 40:1299.42 (1991)	None	None	Future medical costs paid by PCF are paid as incurred 40:1299.43 (1990)	1 yr; 1 yr from discovery; 3 yr max. UPHELD 9:5628 (1975)
ME	None	Sliding scale 24 MRSA §2961 (1988)	M unless right of subrogation exercised 24 MRSA §2906 (1990)	M over \$250,000 if requested by either party 24 MRSA §2951 (1985)	3 yrs; 3 yrs from discovery of FO 24 MRSA §2902 (1988)
MD	\$815,000 cap on non-economic damages with \$15,000 annual increase Cts. & Jud. Proc. §3-2A-09 (Effective 1/11/2005)	Court approval if disputed Cts. & Jud. Proc. §3-2A-07 (1986)	None	D Cts. & Jud. Proc. §11-109 (1986)	5 yrs; 3 yrs from discovery; FO for minors only UPHELD Cts. & Jud. Proc. §5-109 (1987)
MA	\$500,000 cap on non-economic damages (exceptions) MGLA 231 §60H (1986)	Sliding scale MGLA 231 §60I (1986)	M – Bans subrogation MGLA 231 §60G (1986)	None	3 yrs; exceptions with 7 yr maximum MGLA 260 §4 (1986)
MI	\$465,900 cap on non-economic damages with exceptions reaching \$832,000 (all amounts adjusted for inflation on 12/31) §600.1483 (1994)	33.33% of recovered MI Court Rules 8.121(b) (1985)	M unless right of subrogation exercised §600.6303 (1986)	M over \$250,000 (with exceptions) §600.6307 (1986)	2 yr or 6 month from discovery; 6 yr maximum; 6 month FO §600.5805 (1986) & §600.5838a (1986)
MN	None	None	M §548.36 (1986)	M over \$100,000 at request of plaintiff §549.25 (1988)	4 yrs §541.076 (1999)
MS	\$500,000 cap on non-economic damages §11-1-60 (Effective 9/1/2004)	None	None	None	2 yrs from discovery 7 yrs from occurrence §15-1-36 (1998)
MO	\$427,901 cap on non-economic damages with exceptions reaching \$736,310 for catastrophic injury or death (amounts adjusted by 1.7% annually on 1/1). §538.210 (2015)	None	None	M over \$100,000 at request of either party §538.220 (1986)	2 yrs from discovery; 10 yr maximum; 2 yr from discovery of FO §516.105 (1976)
MT	\$250,000 limit on non-economic damages §25-9-411 (1997)	None	M over \$50,000 unless subrogation allowed by law §27-1-308 (1987)	M over \$50,000 at request of either party §25-9-412 (1995)	3 yrs from discovery; 5 yr maximum §27-2-205 (1987)

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NE	\$500,000 total cap per provider; \$1,750,000 cap on total damages (difference paid by state fund) §44-2825 (Effective 1/1/2005)	Court to approve §44-2834 (1976)	D (only applies to nonrefundable medical reimbursement insurance) §44-2819 (1976)	None	2 yrs or 1 yr after discovery; 10 yr maximum §25-222 (1972)
NV	\$350,000 non-economic damages cap NRS 41A.035 (Effective 11/23/2004)	Sliding scale NRS 7.095 (Effective 11/23/2004)	E - Bans subrogation NRS 42.021 (Effective 11/23/2004)	M over \$50,000 at request of either party NRS 42.021 (Effective 11/23/2004)	After Oct. 1, 2002, 3 yrs from date of injury, 1 year from date of discovery NRS §41A.097 (Effective 11/23/2004)
NH	None: \$250,000 cap on non-economic damages ruled UNCONSTITUTIONAL (1980)	None: Court determined UNCONSTITUTIONAL	None: M ruled UNCONSTITUTIONAL	None: D ruled UNCONSTITUTIONAL	3 yrs from discovery (2 yr limit for med liability found UNCONSTITUTIONAL ) §508:4
NJ	None	Sliding scale NJ Rules of Court §1:2107 (2002)	M §2A:15-97 (1987)	None	2 yrs from discovery §2A:14-2 (1993)
NM	\$200,000 total cap per provider/occurrence; \$600,000 cap/occurrence on total damages plus future medical care costs (difference paid by PCF) §41-5-6 & §41-5-7 (1992)	None	None	M - As medical expenses incurred §41-5-7 (1992)	3 yrs §41-5-13 (1976)
NY	None	Sliding scale Judiciary Law §474-a (1985)	M §4545 (1986)	M over \$500,000 (with restrictions) §5031 (2003)	2 yrs, 6 mo; 1 yr discovery FO exception CPLR §214-a (1986)
NC	\$533,409 cap on non-economic damages per occurrence, with exception for gross negligence. Adjusted by CPI every 3 years as of 1/2014. §90-21.19 (Effective 10/1/2011)	None	None	None	3 yrs; maximum of 4 yrs; 1 yr FO exception w/ 10 yr maximum §1-15 (1979)
ND	\$500,000 cap on non-economic damages §32.42.02 (1995)	None	M (excludes benefits subject to repayment) §32-03.2-06 (1987)	D (in limited circumstances) §32-03.2-09 (1987)	2 yrs from act or discovery; 6 yr maximum §28-01-18 (1985)
OH	Greater of \$250,000 or 3 times economic damages up to max of \$350,000/plaintiff, \$500,000/occurrence (\$500,000/plaintiff and \$1 million/occurrence in catastrophic cases) §2323.43 (2003)	Capped at amount of non-economic damages unless otherwise approved by the court §2323.43(F) (2003)	E unless right of subrogation exists §2323.41 (2003)	D over \$50,000 § 2323.55 (2003)	1 yr from discovery; 4 yr statute of repose §2305.113 (Effective 4/7/2005)

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OK	\$350,000 cap on non-economic damages with limited exceptions for intentional or grossly negligent acts. 23 Okl.St. Ann. §61.2. Ruled UNCONSTITUTIONAL (4/2019)	50% maximum 5 Okl.St. Ann. §7 (1953)	E unless right of subrogation exists 63 Okl.St. Ann. §1-1708.1D (2003)	None	2 yrs from discovery 76 Okl.St. Ann. §18 (1976)
OR	\$500,000 cap on non-economic damages (1987) (ruled unconstitutional in 1999, decision overturned in 2016)	None	D §31.580 (1987)	None	2 yrs from discovery 5 yr maximum UPHELD §12.110 (1987)
PA	None (prohibited by state constitution)	None: Sliding scale ruled UNCONSTITUTIONAL	M – Bans subrogation 40 P.S. §1303.508 (2002)	M over \$100,000 (future medical and related expenses) 40 P.S. §1303.509 (2002)	2 yrs or 2 yrs from discovery 42 P.S. §5524 (1992); 7 yr statute of repose (except for FO and minors) 40 P.S. §1303.513 (2002)
RI	None	None	E (M offset and bans 1 <sup>st</sup> party liens) §9-19-34.1 (1986)	D over \$150,000 §9-21-13 (1987)	3 yrs or 3 yrs from discovery §9-1-14.1 (1988)
SC	\$462,070 cap on non-economic damages per provider/claimant up to \$1,386,205 maximum (annually indexed to inflation on 12/31) §15-32-220 (Effective 7/1/2005)	None	None	None	3 yrs or 3 yrs from discovery; 6 yr max; 2 yrs FO exception §15-3-545 (1977)
SD	\$500,000 cap on non-economic damages §21-3-11 (1976)	None	E (excludes benefits subject to subrogation or paid for by claimant) §21-3-12 (1977)	D over \$200,000 §21-3A (1988)	2 yrs §15-2-14.1 (1977)
TN	\$750,000 cap on non-economic damages per incident with exceptions up to \$1 million. TN Code Ann. 29-39-102 (effective for injuries occurring after 10/1/2011)	33.3% of damages awarded UPHELD §29-26-115 (1976)	M (exceptions include insurance purchased by claimant) § 29-26-119 (1975)	None	1 yr from discovery; 3 yr maximum (FO exception) §29-26-116 (1976)
TX	\$250,000 cap on non-economic damages per claimant for all physicians; \$250,000 cap on non-economic damages per claimant for institution (up to 2) Civ. Prac. & Rem. Code §74.301 (2003)	None	None	M at request of plaintiff or defendant Civ. Prac. & Rem. Code §74.503 (2003)	2 yrs; 10 yr maximum Civ. Prac. & Rem. Code §74.251 (2003)
UT	\$450,000 cap on non-economic damages for cause of action arising after 5/15/10 (\$480,000 for earlier cases) §78B-3-410 (2010)	33.3% of recovered §78-14-7.5 (1985)	M (excludes benefits subject to subrogation) §78-14-4.5 (1985)	M over \$100,000 at request of either party §78-14-9.5 (1992)	2 yrs from discover; 4 yrs maximum 1 yr FO exception §78-14-4 (1979)

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VT	None	None	None	None	3 yrs or 2 yrs from date of discovery; 7 yr maximum; 2 yr FO exception 12 VSA §521 (1977)
VA	\$2.4 million cap on total damages (annual increases of \$50,000 from 7/1/2012 through 7/1/2031 §8.01-581.15 (2011))	None	None	D (at court option - no statutory citation)	2 yrs; 10 yr maximum; 1 yr FO exception §8.01-243 (1987)
WA	None: Previous cap on non-economic damages ruled UNCONSTITUTIONAL (1989)	Court determines reasonableness §7.70.070 (1976)	E §7.70.080 (Effective 6/7/2006)	M over \$100,000 at request of either party §4.56.260 (1986)	3 yrs; 1 yr from discovery; 8 yr maximum; 1 yr FO exception §4.16.350 (1987)
WV	\$342,559 cap on non-economic damages per occurrence. UPHELD. Exceptions raise it to \$685,117. Annual adjustment by the CPI on 1/1 up to \$375,000 and \$750,000 respectively §55-7B-8 (2003)	None	M unless right of subrogation exists §55-7B-9a (2003)	None	2 yrs or 2 yrs from discovery; 10 yrs maximum §55-7B-4 (2003)
WI	\$750,000 cap on non-economic damages §893.55 (2006) UPHELD (2019)  \$350,000 cap on non-economic damages ruled UNCONSTITUTIONAL  In wrongful death cases, non-economic damages of \$500,000 (for a minor) or \$350,000 (for an adult) may be awarded §895.04 (1998)	Sliding scale §655.013 (1986)	None E rule nullified by State Supreme Court	M (present value of awards over \$100,000 go to PCF for distribution) §655.015 (1995) UPHELD	3 years or 1 year from discovery (FO 1 yr from discovery) §893.55 (1986)
WY	None (prohibited by state constitution)	Nothing hard - sliding scale prescribed State Bar Contingent Fees Rule 5 (1987)	None	None	2 yrs from act or discovery §1-3-107 (1977)