

Medical Liability Reform Action Guide



Issue Introduction:

Medical liability reform is needed to end a broken liability system currently serving as a barrier between physicians and patients, **creating uncertainty in critical care situations**. Where physicians should be practicing medicine without fear of reproach, the current system instead forces **physicians to evaluate care under the lens of liability and risk instead of care**.

The AAOS believes broad reforms are necessary to compensate negligently injured patients promptly and equitably, enhance patient-physician communication, facilitate improvement of patient safety and quality of care, reduce defensive medicine and wasteful spending, decrease liability costs, and improve patient access to care.



Efforts for comprehensive medical liability reform should include the **following core principles: compensation, communication, dispute resolution, a culture of safety and quality, reduced defensive medicine, and improved access to care.**

The Facts: Malpractice claims are routinely unawarded yet still carry a heavy weight of anxiety and stress for medical practitioners. This weight can be outsized compared to the actual number of claims awarded, leading physicians to practice defensive medicine.



- General surgeons, OB/GYNs, emergency medicine physicians, **surgical subspecialists** and, to a lesser extent, radiologists **had a higher incidence of claims than internists**.¹
- 55% of physicians in the United States have been part of a malpractice suit, either alone or with others. Additionally, **orthopaedics [sic] ranked as one of the highest sued sub-specialties as recently as 2023**²
- Between 2009-2014, **74.9% of liability claims within the specialty field of orthopedics were unpaid**.³
- In this same period, **annual medical liability system costs**, including defensive medicine, **were estimated to be \$55.6 billion in 2008 dollars**.⁴

¹Guardado J, PhD Policy Research Perspectives Medical Liability Claim Frequency Among U.S. Physicians, American Medical Association

²McKenna J, Infographic: The Frequency and Costs of Medical Malpractice Lawsuits, Medical Malpractice report 2023, Medscape.

³Schaffer, Adam C et al. "Rates and Characteristics of Paid Malpractice Claims Among US Physicians

by Specialty, 1992-2014." JAMA internal medicine vol. 177,5 (2017): 710-718. doi:10.1001/jamainternmed.2017.0311

⁴Mello MM, Chandra A, Gawande AA, Studdert DM. National costs of the medical liability system. Health Aff (Millwood). 2010;29(9):1569-1577. doi:10.1377/hlthaff.2009.0807

What we have done:

To address the urgent need for medical liability reform, AAOS has created a sub-committee comprised of orthopedic surgeons, the Medical Liability Committee (MLC), to lead their reform efforts. The MLC's Committee's mission includes developing and prioritizing AAOS activities related to the medical malpractice crisis.

In addition, AAOS is also an executive member and secretary of the [Health Coalition on Liability and Access \(HCLA\)](#), a coalition of other similarly minded institutions and organizations based out of Washington, DC.



Medical Liability Committee Overview:

The committee charge includes monitoring trends, developing strategies, educating the fellowship, and overseeing the AAOS medical liability reform campaign. The full committee's responsibilities are as follows:

- Align all activities to support execution and achievement of the mission, vision, goals, strategic objectives and metrics of the Strategic Plan and conduct all business in accordance with the Core Values as adopted by the Board of Directors.
- Monitor trends regarding professional liability and tort reform.
- Develop strategy and prioritize activities in response to the medical liability crisis.
- Develop appropriate organizational statements to serve the Fellowship in the arena of professional liability.
- Work with the appropriate Council(s) or Committee(s) to develop programs, publications, and products that educate the Fellowship on liability risks and methods to decrease the Orthopaedic surgeon's exposure to liability.
- Oversee the operations and spending of the AAOS Medical Liability Reform campaign.



Medical Liability Committee Membership:

➤ **Chair**-Steven B. Cohen, MD, FAAOS

➤ Jeffrey W. Racca, MD, FAAOS

➤ Shawn A. Hayden, MD, FAAOS



Health Coalition on Liability and Access Overview:

HCLA is a national advocacy coalition working to enact medical liability reform at the federal level to help reduce health care costs for all Americans and to ensure patient access to quality medical care. HCLA accomplishes its goals through the following avenues:

- Analyzing legislative policy initiatives at both the state and federal level
- Testifying before the US Congress
- Sponsoring congressional staff briefings
- Conducting public opinion polling and candidate surveys,
- Additionally, the HCLA sponsors Protect Patients Now (PPN), a grassroots advocacy organization comprised of physicians, patients and concerned citizens dedicated to reforming our nation's broken liability system.



Policy Position and History:

The AAOS Office of Government Relations (OGR) leads advocacy efforts for this issue, based on the position that the current medical liability system limits the ability of physicians to provide the highest quality patient care. Systemic medical liability reform is necessary to improve the overall health care system. Additionally, the current structure fails to fairly compensate injured patients in a timely manner, prevents open analysis of medical errors, promotes defensive medicine, and restricts access to care.

In spring 2023, the **American Orthopaedic Society for Sports Medicine (AOSSM)** published, and **29 organizations signed**, an [Open Letter](#) addressing medical liability and expert testimony. From there, the AAOS Board of Directors has moved **medical liability reform to be a high priority for the Academy moving forward.**

Background of High legal Toll Demands Urgency and Priority for Orthopaedic Surgeons

In the years since AAOS' Board of Directors moved to codify medical liability reform as one of the top issues for the Office of Government Affairs, new research has only solidified the unfair burden that orthopaedic surgeons face as well as the need for proactive action to protect surgeons. Published in 2025, the article **Medical Malpractice Litigation in Orthopaedic Surgery in the United States Risk Factors; Outcomes, and Strategies for Navigating Lawsuits, Prevention, and Reform** highlighted that Orthopaedic remain one of the most litigated specialties. Providing physicians with tools and strategies to lower risk for surgeons, as well as covering the general impact of liability suits on providers, the article serves as a valuable tool, resource, and reminder for providers on Medical Liability Reform.

Read It hear: <https://pubmed.ncbi.nlm.nih.gov/41405574/>



Emerging Federal Issues:

In the emerging federal issue section, we cover past legislation that AAOS and the MLR Committee have supported in the past and continue to support, should they be reintroduced. While these pieces of legislation have not been passed in Congress in previous sessions, the framework and models serve as the basis for future legislation and advocacy.



Good Samaritan Health Professionals Act:

This bill generally extends liability protection for harm caused by acts or omissions by volunteer health care professionals while providing certain health care services during specified public-health or national emergencies or major disasters.



Notes: However, the liability protection shall not apply if (1) the harm was caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed; or (2) the health care professional provided services under the influence of alcohol or an intoxicating drug.

Good Samaritan Health Professionals Act Insider Prospective:

- This legislation will more than likely be re-introduced. This faced challenges getting re-introduced in the Senate because Senate HELP Republicans wanted more explicit protections for those physicians refusing abortion care.
- Senators Roger Marshall, MD (R-KS) and Angus King (I-ME) were working on it together but we're not sure what their appetite would be with it moving forward. Rep. Raul Ruiz, MD (D-CA) and former Rep. Larry Bucshon, MD(R-IN) in the House

Accessible Care by Curbing Excessive Lawsuits (ACCESS) Act ([HR. 9584 in the 117th](#))

This bill establishes rules for health care lawsuits where some amount of coverage or care was provided or paid for by a federal program, regardless of the number of other parties to the claim.



Notes: The bill sets a three-year maximum statute of limitations from the date of the injury, subject to specific exceptions. Further, noneconomic damages (e.g., damages for pain and suffering) are limited to a maximum of \$250,000. The bill permits courts to supervise and limit contingent fees paid to attorneys and sets a maximum contingent fee percentage based on a downward sliding scale as damages increase. This bill generally does not preempt state laws that impose additional limits on health care liability claims

Insider Prospective:

- HCLA did try to work with Representative Richard Hudson (R-NC) in getting this re-introduced for the 118th but ran out of time on the legislative calendar.
- AAOS has supported this in the past, even just nominally sending a letter of support.
- HCLA will push for re-introduction again, however this does not have the same kind of velocity behind it as the Good Samaritan bill.

Student Athlete Opioid Misuse Protection Act (H.R.7246 in the 117th) This legislation will help educate students and train athletic directors, youth sports coaches, school administrators, and other members of the athletic community on the signs and dangers of opioid and substance misuse, as well as strategies for prevention.



Notes: The bill will create a federal grant program through the U.S. Department of Health and Human Services, to invest in educational and training programs at the youth, high school, and collegiate levels on the misuse of opioids and other substances commonly used in pain management or injury recovery by students and student athletes.



Notes: As in previous related legislation, Congressman Pete Sessions (R-TX) also sponsored the bill. The bill passed the U.S. House of Representatives in 2017 with Rep. Sessions but did not pass the U.S. Senate; following the bills resubmission in the 117th congress, AAOS submitted a support letter for this legislation on April 25, 2022.

Insider Prospective:

- This legislation was introduced to the 117th Congress last year by Congressman Josh Gottheimer (NJ).

Insider Prospective:

- Normally our next steps would include re-engaging with Mr. Sessions in office to collect co-sponsors, including identifying a potential Democratic co-lead, and advocating for the legislation’s approval.
- However, given that there is a high-profile DEA investigation with the NFL currently, we are cautiously monitoring the situation to see how things land in the NFL. We can adjust and move forward with Mr. Sessions office accordingly.
- This could still be an action item in the 2025 calendar year.



Medical Controlled Substances Transportation Act (117th Congress) this legislation aims to amend the Controlled Substances Act to allow practitioners to transport controlled substances to states where they are not registered, facilitating the administration of these substances at.



Continued Congressional Engagement in Name, Image, Likeness (NIL) With the rapid change in the collegiate sports environment due to NIL deals Congress is increasingly looking to ensure appropriate regulations and safety measures are in place for college athletes. The AAOS is monitoring an increasing number of bills to address the evolving landscape. On Tuesday, March 4, 2025, Congressman Brett Guthrie (R-KY), Chairman of the House Committee on Energy and Commerce, and Congressman Gus Bilirakis (R-FL), Chairman of the Subcommittee on Commerce, Manufacturing, and Trade, announced a hearing titled “[Moving the Goalposts: How NIL is Reshaping College Athletics](#).” Rep. Bilirakis previously played a role in the introduction of The Fairness, Accountability, and Integrity in Representation of College Sports Act (FAIR College Sports Act) in 2023.



- In 119th Congress, we saw legislative activity from the House, including:**
- House Republican Conference Chairwoman Lisa McClain (R-MI.) and Rep. Janelle Bynum (D-OR.) introduced the [College Student-athlete Protections and Opportunities through Rights, Transparency, and Safety \(College SPORTS\)](#)
 - Rep. Michael Baumgartner (R-WA) introduced [H.R.2663 - Restore College Sports Act](#)



Notes: Both acts attempt to provide student athletes with fair treatment, improved educational outcomes, and financial support by creating a national framework to govern how student athletes receive compensation for NIL deals. The frameworks have the potential to reshape the earning potential of amateur and collegiate athletes found under the care of a team physician, either paid or volunteer, opening up uncertainties related to potential liability.



Insider Prospective: The rapid evolution of NIL has created a chaotic and unpredictable system. The 2025 hearing was intended to discuss ways to stabilize the NIL environment and ensure the well-being of the student-athletes while preserving the integrity of college sports.



Recent State Issues:

In 2025, we saw various defensive legislative efforts and advocacy focused on caps on damages, certificate of merit, expert witness reform, phantom 3 damages, and collateral source reform. Please find summaries of state MLR issues and important legislation from 2025 as an example of emerging topics and solutions to be on the look out for in 2026.

Reform as a Policy Solution: MLR Reform continues to be considered as a solution for issues related to physician retention and to address budget shortfalls. A recent op-ed in the San Diego Tribune argued that MLR reform could be a vital lifeline for the state as Medi-Cal funding continues to be cut by the federal government. State lawmakers face the prospect of a multibillion-dollar shortfall, one that will only worsen year after year as health care spending costs increase. Arguing for [no-fault medical malpractice](#), conditioned on participation on Medi-Cal, the op-ed showcases how states may use MLR reform efforts to address federal policy effects on state budgets.

To read the opinion piece, please refer to the link here:

<https://www.sandiegouniontribune.com/2026/01/23/opinion-medical-malpractice-reform-can-improve-access-to-care-cut-costs/>

Recent State Policy Issues



In Montana, legislation (HB195) increased the current \$250,000 cap on noneconomic damages to a graduated schedule of increases –starting at \$300,000, the limit will rise to \$350,000 in 2026, \$400,000 in 2027, \$450,000 in 2028, and \$500,000 in 2029. After 2030, the limit will increase annually by 2%.



In Maryland, legislation (HB113/SB584) was introduced that would have to removed or significantly raised the non-economic damages cap.

Although these efforts did not explicitly include the noneconomic damages cap for health care claims, the likely next move by trial lawyers will be to seek a similar repeal of the noneconomic damages cap in medical malpractice cases, either through legislation or the courts.



In Oklahoma, a bill (SB 1065) proposed would have capped noneconomic-damages awards at \$500,000. The bill would allow unlimited awards for quantifiable economic damages, including medical expenses and physician billing.

This legislation garnered attention due to the outcome of previous attempts at capping awards for non-economic damages; in 2011 legislation that was passed by the legislature and signed into law by the governor, that would have capped non-economic damages at \$350,000, was struck as unconstitutional at the state level.



In New York, the governor included a proposal in her Executive Budget bill that would require the nearly 16,000 physicians currently enrolled in the Excess Medical Malpractice Insurance program to bear 50% of the cost of these policies, which could be as much as thousands or tens of thousands of dollars.

The Excess Medical Malpractice Insurance Program provides an additional layer of \$1M of coverage to physicians with hospital privileges who maintain primary coverage at the \$1.3 million/\$3.9 million level. The program was created because of the liability insurance crisis of the mid-1980's to address concerns among physicians that liability exposure exceeded available coverage limitations.



In New Mexico, legislation (SB176) was introduced that would have capped attorney fees in medical liability judgements, ended lump-sum payouts, and sent 75% of punitive damages to a new public fund designed to improve patient safety.



In Utah, a bill (HB 288) was introduced that would have extended the statute of repose in medical liability cases, expanded the definition of "collateral source," and increased the limit on awards for noneconomic damages to \$950,000.

Additionally (HB 503) was proposed and passed, with the bill prohibiting pursuing or collecting a judgment against a health care provider's personal income or assets.

Grass Roots Action: Amid new legislation and policy solutions, it's important to recognize the grassroots advocacy groups driving forward many of these laws. States like New Mexico show how new, patient focused non-profits can help with issues like Medical Liability Reform.

Patient Led NM has been showcasing the reality of physician shortage in New Mexico and the impact that it has on patients' health and welfare. Hosting healthcare summits, producing resources, and more, this group is an example of grass roots action. Learn more at www.patientlednm.org

General Perspective: Broad reforms are necessary to compensate negligently injured patients promptly and equitably, enhance patient-physician communication, facilitate improvement of patient safety and quality of care, reduce defensive medicine and wasteful spending, decrease liability costs, and improve patient access to care. **AAOS supports both federal and state-level legislative and advocacy solutions to reform the system and ensure orthopedic surgeons can continue to safely provide patient care.**



Further, AAOS believes that no federal legislation pertaining to liability reform should include provisions that would undermine effective state tort reform provisions or the ability of states to enact tort reform tailored to local needs.



Model Legislation Included are model legislation from our partners at the American Medical Association:



[Limitation on noneconomic damages in medical liability cases](#) (PDF)



[Regulation of contingency fees paid by medical injury claimants](#) (PDF)



[Collateral source payments in medical liability cases](#) (PDF)



[Limitations in medical injury cases](#) (PDF)



[Periodic payments of awards for future damages](#) (PDF)



[Regulation of expert witnesses in medical injury actions](#) (PDF)



[To Foster Open Communication Between Health Care Providers and Patients After Unanticipated Health Care Outcomes](#) (PDF)



[To Require an Affidavit of Merit in Actions Against Health Care Providers for Damages When Rendering or Failing to Render Health Care Services](#) (PDF)



[Model bill: Civil liability during disasters](#) (PDF)



[Model bill: To provide coverage for volunteer physicians](#)

Novel Medical Liability Reform

Research *New Research in the effect caused by the repeal and implementation of caps on awards and more*

New research, **The Repeal of Noneconomic Damage Caps and Medical Malpractice Insurance Premiums**, provides exciting and tangible evidence to support physicians in their efforts surrounding Medical Liability reform. Supported by the RAND Institute for Civil Justice and the National Institutes of Health—including the National Institute on Minority Health and Health Disparities and the National Institute of Nursing Research—the study was published in the Journal of Health Economics on August 31st, 2025.

To view *The Repeal of Noneconomic Damage Caps and Medical Malpractice Insurance Premiums*:

<https://onlinelibrary.wiley.com/doi/abs/10.1002/hec.70032?campaign=wolearlyview>

Background and Study Period: The study, comparing states between 2005 and 2019, was conducted with the goal of understanding both effects of repealing and maintaining noneconomic damages. Researchers worked to determine the effects of both on medical liability premiums and health outcomes.



[It's important to note that the repeal of noneconomic damage caps targeted in this study were through court decisions, rather than legislative efforts. Specifically, researchers looked at the impact of the repeals of caps following State Supreme Court and State Circuit Courts decisions and to compare the impact on premiums.]

- **Study Breakdown:** Researchers applied a difference-in-differences (DD) framework to compare county-level premiums between similar states that repealed their noneconomic damage caps to states that retained their noneconomic damage caps. Furthermore, states were compared on a regional basis to control additional geographic factors.
- **Conclusion of Study:** The study found asymmetric effects between enacting and repealing noneconomic damage caps. The repeal of noneconomic damage caps was found to increase average premiums, especially following the resolution of malpractice cases; premium increases were found to be centered in specific specialties following lower court decisions with premiums increasing across the board following higher court decisions.
- **As a result, researchers are concerned that direct and indirect costs may be passed on to the local patient population through higher fiscal costs for medical care and worse health outcomes due to defensive and reactionary treatment strategies.**

New Research showcases heightened risk for malpractice claims for orthopaedic surgeons performing Arthroscopic surgery

New research, ***Analysis of Reasons for Medical Malpractice Litigation Following Arthroscopic Surgery***, examined claims around the keyword arthroscopic in two large medical legal databases with the goal of examining underlying trends in physician malpractice claim related to arthroscopy.

“Most common reasons for litigation [In order of commonality] were perioperative complications , delayed or denied treatment, poor postoperative management, inadequate informed consent, contraindicated procedure, and gross negligence.”

The majority of practice claims were found to come following arthroscopy. Concerningly, researchers found that more than 90% of the cases involved surgery focused on the knee or shoulder. According to researchers, cases involving the shoulder were significantly more likely to result in a plaintiff verdict or settlement compared to cases involving the knee. Additionally, 71.8% of cases ruled in favor of the defendant, while 9.8% resulted in an out-of-court settlement.

To read more, please view the research paper at <https://pubmed.ncbi.nlm.nih.gov/40743467/>

2025 State Wins

State	Bill Number	Descriptor	Notes
Georgia	<u>SB 68 and 69</u>	Broad Tort Reform	Comprehensive tort reform bills revising civil practice laws, reducing excessive litigation in the state and outsized payments. Signed into law by the governor. Healthcare Professional Advocacy Fund (HPAF) supported. Signed into law April 21st, 2025.
Arkansas	<u>HB 1204</u>	Phantom Damages	Tort reform bill, including reform addressing phantom damages. Signed into law, February 6th, 2025.
Kansas	<u>SB 54</u>	Third-Party Litigation Financing	Third Party Litigation Financing Disclosure Bill limiting discovery and disclosure of third-party litigation funding agreements and requiring reporting of such agreements to courts. Signed into law April 7th, 2025.
Utah	<u>HB 503</u>	Malpractice reform	Repeals requirements related to affidavits of merit; prohibits prejudicing a defendant in an adjudication of a claimant's claims; prohibits pursuing or collecting on a judgment against a health care provider's personal income or assets. Signed into law March 27th, 2025.
Montana	<u>HB 195</u>	Damage Caps and Liability	Establishes caps for noneconomic damage awards, setting a cap that starts at \$300,000 and gradually increases to \$500,000 by 2029, with annual adjustments thereafter. Also makes it so single incident of malpractice affects multiple patients; the damage cap applies individually to each claimant. Signed into law March 27th, 2025
Virginia	<u>HB 1730</u>	Vicarious Employer Liability	Legislation would have made it so that that an employer may be vicariously liable for personal injury or wrongful death of a vulnerable victim; Vetoed by the Governor