

Stop A. 6698 & S. 6636: Expansion of Medical Malpractice Damages

A Chapter of The American College of Surgeons

\$1.5 Billion

From 2019 to 2021, New York had the highest cumulative medical liability payouts in the country.²



New York is number one in the U.S. on claims per capita at \$21.54.²



Not including New York, 29 states have caps in place for medical malpractice damages as of 2021.²

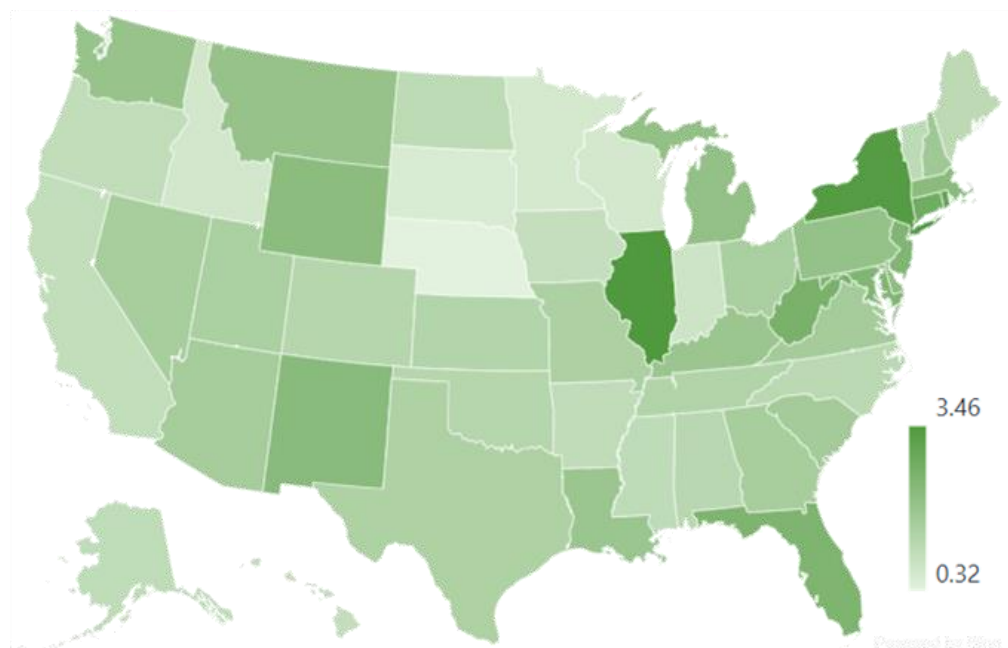


New York is consistently listed as one of the top 10 worst states for physicians to practice in.³

The Issue: Last year, the New York state legislature passed a bill to **expand the types of damages awarded in a wrongful death lawsuit without caps**. Although the bill was vetoed by Governor Hochul, new versions, **Assembly Bill (A) 6698** and **Senate Bill (S) 6636** were recently introduced without addressing any of the concerns physicians raised about the previous legislation. If passed, these bills would impact all areas of liability as well as **increase medical malpractice insurance premiums by nearly 40%** thereby increasing overall healthcare costs to the patient.¹

The Solution: These bills only address one component of the state's disjointed liability system, and **a more comprehensive approach is needed** to provide a positive impact on patients and the wider medical community.

NY Medical Malpractice Claims are 3.5 times More Costly Than California & Other States¹



1. Morris, M., & Vosicky, T. (2023) *Medical professional liability trends* [white paper]. Milliman, Inc. <https://www.milliman.com/en/insight/medical-professional-liability-trends>
2. Diederich Healthcare. (2022). *2022 Medical malpractice payout analysis*. <https://www.diederichhealthcare.com/med-malpractice-payout-analysis-2022/>
3. Carbajal, E. (2023, March 20). *15 best, worst states for physicians in 2023*. Becker's Hospital Review. <https://www.beckershospitalreview.com/rankings-and-ratings/15-best-worst-states-for-physicians-in-2023.html>



How It Impacts The Patient

- **Patients may lose adequate access to care** due to excessive damages causing medical liability insurance plans to deny coverage and **force practices to either close and leave the state** or join larger hospital systems.
- **Patients in underserved and rural communities will be impacted the most.** Vital medical treatments may be delayed, and emergency departments will experience longer wait times.

- **Physicians may feel the need to practice “defensive medicine”** such as ordering additional tests and consultations or avoiding care for riskier patients.
- Medical liability premiums will increase nearly 40% equaling **thousands of dollars physicians will need to pull from other vital resources** within their practices.



How It Impacts The Physician

- According to the National Academy for State Health Policy, the **median net profit margin for New York hospitals was 1% in 2019 compared to the national average of 4.4%.**
- With slim operating margins, **hospitals may be forced to lay off physicians, support staff and nurses** impacting the number of operational beds available to patients.



How It Impacts The Hospital

- While A. 6698 and S. 6636 reduced the number of persons who would be eligible for a share of the damages and lowered the statute of limitations to 3 years (still an increase of 1 year from the current 2-year statute), the **updated legislation fails to address caps on damages** and would drastically increase healthcare costs at the patient, physician, and hospital levels.
- This legislation will **give juries the power** to determine the monetary value of emotional injuries, a complex and inexact calculation, unlike that of medical costs and potential earnings, and **could result in inflated financial awards.**
- **The party that benefits the most** from this legislation is **not the patient** and their family, but instead the **trial attorneys that will make soaring profits off percentages** returned from increased financial awards in wrongful death action lawsuits.

Additional Talking Points

Thank you to the New York State Legislature for prioritizing surgical care!



To learn more about the New York Chapter of the ACS and surgical care in New York, use the QR code to visit our website or contact our Executive Director, Babette Atkins at batkins@nysurgeon.org.