

# Preserving Access to Health Care with Modernized Medical Liability Caps

## SUMMARY

There are currently two types of medical liability awards in Colorado – economic damages and non-economic damages. Non-economic damages (NED) are intangible losses such as reduced quality of life, pain and emotional trauma. In Colorado, these are currently capped at \$300,000.

*In 2024, legislation would seek to increase the non-economic damages cap to \$500,000 over a 5-year period, providing a balanced approach to compensating plaintiffs of medical liability while also ensuring accessibility, affordability and stability in Colorado's health care system.*

### WHY IS IT TIME TO RAISE COLORADO'S NED CAP?

- Our NED cap is the 5th lowest in the country and has been unchanged for 20 years.
- Every state has implemented some form of medical liability reform. Colorado is one of 28 states that limit non-economic damages in medical liability cases.
- In the past two years, California and Nevada have passed similar legislation to amend the NED.

### BALANCE IS KEY: WHY ARE REASONABLE NED CAPS IMPORTANT TO COLORADANS?

If the NED cap is set too high or eliminated altogether, liability insurance becomes unaffordable for providers and healthcare organizations, driving them out of the state. This impacts all Coloradans, particularly those in rural areas and those needing high-risk specialists like obstetricians, by limiting access to care, contributing to rising costs of care and leading to decreased quality of care. Reasonable medical liability caps:

- **Protect access to health care** for Coloradans, particularly those in rural and underserved communities, as well as those who rely on Medicaid coverage. Rural areas in Colorado already have 30% fewer physicians, 24% fewer nurses and physician assistants and 61% fewer psychologists compared with urban areas. These communities cannot afford to lose any more medical professionals without risking loss of care options close to home.

### WHY DO MEDICAL LIABILITY CAPS EXIST?

- Bipartisan medical liability caps were created in 1988 as part of the Colorado Health Care Availability Act (HCAA).
- HCAA has withstood legislative and judicial challenges to provide medical professionals with predictable liability rates, which protects patients by keeping health care costs stable.
- Research from 2018 tells us that NED caps are one key reason medical professionals continue practicing medicine in Colorado, particularly those that provide specialty care in rural and underserved communities.
- Keeping our health care environment healthy means raising caps to a reasonable level, while ensuring they're not eliminated altogether.

For fully insured patients, the elimination of caps would result in a gross increase to their cost of care, and by extension, their insurance. For those who rely on public insurance, which is especially prevalent in rural Colorado according to the Colorado Rural Health Center, the elimination of caps would result in reduced access to care.

- **Protect patients from skyrocketing health care costs** from higher out-of-pocket medical expenses passed on to consumers when medical liability insurance goes up. In addition to the impact to cost of care for insured patients, eliminating NED caps would also likely lead to an increased practice of defensive medicine like ordering scans and tests to ensure needed documentation in the case of an adverse outcome—all of which become additional costs to patients.
- **Ensure access to high-risk specialty care**, like obstetrics, neurosurgery and psychiatry. Providers who see the most complex medical challenges are often primary targets of litigation, and large verdicts can cause some to reconsider specialty practices or choose to practice in more favorable environments. Already, wait times for specialties are increasing and attributed to a burgeoning population and a system stretched thin. Any further negative impacts would be detrimental.
- **Promote a favorable business environment** by attracting health care providers that keep our citizens and workforce healthy. This, in turn, stimulates economic growth, creates job opportunities and bolsters the prosperity of our communities.

In states with medical liability reforms, including damage caps, frivolous litigation has decreased and annual liability premiums for medical professionals remain stable and predictable. These states saw an increased number of practicing physicians – from 3% to as much as 12% – which increased access to care and lowered costs. In states with NED caps that are set too high or don't exist, practices have been forced to file for bankruptcy or close altogether because of astronomical verdicts, ultimately limiting access to care for patients.

#### THE BOTTOM LINE

Landmark reports from Keystone Policy Center and Colorado Health Institute highlight how Colorado's bipartisan medical liability reforms, including the NED cap, protect patients and the medical community. **It's time to increase the NED cap in Colorado. A fair, reasonable cap provides just compensation for plaintiffs, while retaining and attracting talented providers to our state so Coloradans have access to high-quality, affordable health care.**

#### WHO WE ARE

Coloradans Protecting Patient Access (CPPA) is a broad coalition of Colorado-based organizations committed to ensuring our state is the best place to receive medical care and for providers to deliver care to their patients. We take a balanced approach that considers the interests of patients, health care providers and the overall well-being of our state.

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