Medical Malpractice Liability Reform: Legal Issues and 50-State Surveys on Tort Reform Proposals

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Summary

Medical malpractice liability is governed by state law, but Congress has the power, under the Commerce Clause of the U.S. Constitution (Art. I, § 8, cl. 3), to enact tort reform laws that would affect actions for medical malpractice liability brought under state law. In the 112th Congress, H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act was introduced by Representative Phil Gingrey on January 24, 2011, and was marked up on February 9 and 16, 2011, by the House Committee on the Judiciary. This bill would preempt state law with respect to certain aspects of medical malpractice lawsuits. Past Congresses have considered similar measures.

This report does not examine the effects of medical malpractice litigation or medical malpractice liability reform on the health care system or on the cost of liability insurance premiums; rather, it explains specific tort reform proposals that are commonly included in medical malpractice liability reform bills, and discusses the individual arguments in favor of and against such proposals from a legal perspective. These proposals include imposing caps on noneconomic damages and punitive damages; permitting defendants to be held liable for no more than their share of responsibility for a plaintiff's injuries; requiring that damage awards be reduced by amounts plaintiffs receive from collateral sources such as health insurance; limiting lawyers' contingent fees; creating a federal statute of limitations; and requiring that awards of future damages in some cases be paid periodically rather than in a lump sum. It also includes, where appropriate, a description of H.R. 5's provisions with respect to these categories.

An **Appendix** to this report includes five tables. The first table (**Table A-1**) is a 50-state survey of definitions of a medical malpractice action or to whom state medical malpractice statutes apply. The second table (**Table A-2**) is a 50-state survey of caps on noneconomic and punitive damages. The third table (**Table A-3**) is a 50-state survey of the burden of proof standards for punitive damages and whether a state requires a separate proceeding to determine such damages. The fourth table (**Table A-4**) is a 50-state survey of whether the doctrine of joint and several liability applies to malpractice actions in a state and whether periodic payment of damages is to be considered in an award for a medical malpractice action. The fifth table (**Table A-5**) is a 50-state survey of limits on attorneys' contingency fees. The sixth table (**Table A-6**) is a 50-state survey of statute of limitation provisions for both medical malpractice and product liability actions.

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Introduction

This report does not examine the merits or possible effects of medical malpractice litigation or medical malpractice liability reform on the health care system or on the cost of liability insurance premiums.[1] Rather, this report explains specific tort reform proposals that are commonly considered in medical malpractice liability reform measures, and discusses their individual arguments in favor of and against such proposals from a legal perspective. These include imposing caps on noneconomic damages and punitive damages; permitting defendants to be held liable for no more than their share of responsibility for a plaintiff's injuries; requiring that damage awards be reduced by amounts plaintiffs receive from collateral sources such as health insurance; limiting lawyers' contingent fees; creating a federal statute of limitations; and requiring that awards of future damages in some cases be paid periodically rather than in a lump sum. Where appropriate, the report includes a brief summary of the tort reform measures included in H.R. 5.

The Tort of Medical Malpractice

Medical malpractice is a tort, which is a civil (as distinct from a criminal) wrong, other than a breach of contract, that causes injury for which the victim may sue to recover damages. Actions in tort derive from the common law, which means that the rules that govern them were developed by the courts of the 50 states, and no statute is necessary in order to bring a tort action. Statutes, however, can change the court-made rules that govern tort actions, and many states have enacted tort reform statutes, including medical malpractice reform statutes. Congress also has the power, under the Commerce Clause of the U.S. Constitution (Art. I, § 8, cl. 3), to enact tort reform laws that would affect actions for medical malpractice liability brought under state law.

Medical malpractice liability arises when a health care professional engages in negligence or commits an intentional tort. Negligence has been defined as conduct "which falls below the standard established by law for the protection of others against unreasonable risk of harm."[2] In most instances it arises from a failure to exercise due care, but a defendant may have carefully considered the possible consequences of his conduct and still be found to have imposed an unreasonable risk on others. "Negligence is conduct, and not a state of mind."[3] The following is a traditional description of the standard of care to which doctors are held to avoid liability for medical malpractice:

[1] For example, advocates of medical malpractice liability reform argue that current state tort law provides a costly and inefficient mechanism for resolving claims of health care liability and compensating injured patients, and that increasing liability insurance premiums are forcing doctors to curtail their medical practices and to engage in excessive "defensive medicine." Opponents of medical malpractice reform have argued that there is a very minimal relationship between health care costs and malpractice litigation, and that, "in reality, very few injured patients ever file a medical negligence lawsuit." *See* American Association for Justice, *Medical Negligence: A Primer*, February 2011 at 8. *See also* David M. Studdert, Michelle M. Mello, Atul A. Gawande, Tejal K. Ghandi, Allen Kachalia, Catherin Yoon, Ann Lousie Puopolo, Troyen A. Brenna, *Claims, Errors and Compensation Payments in Medical Malpractice Litigation*, 354 New Eng. J. Med. 2024 (2006). For more information on medical malpractice insurance and health reform, see CRS Report R40862, *Medical Malpractice Insurance and Health Reform*, by (name redacted), (name redacted), and (name redacted).

[2] Restatement (Second) of Torts, § 282.

[3] W. Page Keeton, Prosser and Keeton on Torts, § 31 (5th ed. 1984).

> This legal duty requires that the physician undertaking the care of a patient possess and exercise that reasonable and ordinary degree of learning, skill, and care commonly possessed and exercised by reputable physicians practicing in the same locality.[4]

Today, however, many jurisdictions utilize some variation of the national standard of care. As one U.S. court of appeals explained:

> The skill, diligence, knowledge, means and methods [required] are not those "ordinarily" or "generally" or "customarily" exercised or applied, but those that are "reasonably" exercised or applied. Negligence cannot be excused on the ground that others practice the same kind of negligence. Medicine is not an exact science and the proper practice cannot be gauged by a fixed rule.[5]

While most medical malpractice actions rely on the theory of negligence, medical malpractice liability, as noted, may arise from an intentional tort as well as from negligence. In such actions, the practitioner is generally alleged to have intentionally acted in a fashion that ultimately caused harm to the patient.[6] The general difference between an action based in negligence and one based in intentional tort is that "a medical procedure poorly performed might constitute negligence, while a medical procedure correctly performed that was not consented to might constitute an intentional tort."[7]

Noneconomic Damages

Economic damages refer to monetary losses that result from an injury, such as medical expenses, lost wages, and rehabilitation costs. Noneconomic damages consist primarily of damages for pain and suffering. Determining the amount of noneconomic damages is traditionally subject to broad discretion on the part of juries, which must equate two variables—money and suffering—that are essentially incommensurable. Judges, however, have the authority to reduce damage awards that they find excessive.[8] See **Table A-2** for a 50-state survey of caps on noneconomic and punitive damages.

Section 4 of the H.R. 5 would not limit the amount of economic damages a claimant recovers in a health care lawsuit.[9] Economic damages under the bill would be defined as monetary losses incurred, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment

[4] David M. Harney, Medical Malpractice § 21.2 (3d ed. 1993).

[5] Nalder v. West Park Hospital, 254 F.3d 1168, 1176 (10th Cir. 2001).

[6] Marcia M. Boumil, et al., Medical Liability 65 (2d ed. 2003).

[7] *Id.*

[8] *See* Michael Higgins, *Homogenized Damages: Judge suggests using statistical norms to determine whether pain and suffering awards are excessive*, American Bar Association Journal (Sept. 1997) at 22.

[9] H.R. 5, § 4(a). A "health care lawsuit," defined as: any health care liability claim ... or action concerning the provision of health care goods or services or any medical product in or affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system *against* a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim (emphasis added). H.R. 5 § 9(7). See **Table A-1** for a 50-state survey on the definitions of medical malpractice action.

opportunities.[10] However, it generally would limit noneconomic damages, if awarded, to $250,000, regardless of the number of parties against whom the action is brought, or the number of separate claims or actions brought with respect to the same injury.[11] Noneconomic damages would be defined as damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind of nature.[12]

Arguments For Caps on Noneconomic Damages

Advocates for caps on noneconomic damages argue that a lack of caps guarantees inconsistency and unpredictability in the tort system, and forces insurers to counter this uncertainty by charging higher premiums. Disagreement over the amount of pain and suffering damages is a major obstacle to out-of-court settlement, thus increasing litigation and, as advocates maintain, coercing insurers to overpay on settlements of smaller claims. Further complicating the problem, they argue, is a tendency of juries to inflate pain and suffering awards to cover some or all of the plaintiff's attorney's fees.

Arguments Against Caps on Noneconomic Damages

It has been argued that caps on noneconomic damages could have disparate effects on different patient populations.[13] For example, elderly plaintiffs and poorer individuals who are involved in a malpractice case may not be able to claim much in economic damages, such as lost wages. Thus, capping noneconomic damages would leave these types of plaintiffs little in damages from a malpractice suit and therefore decreased incentive for a lawyer to represent them. Furthermore, opponents of a cap assert that the $250,000, included in H.R. 5, was adopted by California in 1975 "at a time when pain-and-suffering awards rarely exceeded that amount," and that more than 30 years later inflation has taken a toll.[14]

Punitive Damages

Punitive damages (also called exemplary damages) are awarded not to compensate plaintiffs but to punish and deter particularly egregious conduct on the part of defendants—generally meaning reckless disregard for the safety of others, and more than negligence or even gross negligence.

[10] H.R. 5, § 9(6).

[11] H.R. 5, § 4(b). Section 11 of provides that H.R. 5 would not preempt "any State law (whether effective before, on or after the date of enactment ...) that specifies a particular monetary amount of compensation or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, *regardless of whether such monetary amount is greater or lesser* than is provided for under this Act." H.R. 5 § 11(c).

[12] H.R. 5, § 9(15).

[13] Health Affairs, Medical Malpractice and Errors: Issue Update, *Medical Liability and the Prospect of National Tort Reform*, September 7, 2010. *See also* Peter Perlman, *Don't Punish the Injured*, American Bar Association Journal (May 1986) at 34 ("By forever freezing compensation at today's levels, caps discriminate against a single class of Americans whose members are destined to suffer a lifetime of deprivation of dignity and independence.").

[14] An amendment to H.R. 5 to increase the $250,000 cap to $1,977,500 and index it to the Consumer Price Index Edward was rejected during the House Committee on the Judiciary mark up. *See also* Felsenthal, *Why a Medical Award Cap Remains Stuck at $250,000*, Wall Street Journal (Nov. 1995).

Punitive damages are noneconomic by nature, but state statutes that impose caps on punitive damages usually treat them separately from compensatory noneconomic damages.[15]

The mere commission of a tort is generally not sufficient to obtain an award of punitive damages. As one treatise states:

> There must be circumstances of aggravation or outrage, such as spite or "malice," or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that the conduct may be called wilful or wanton. There is general agreement that, because it lacks this element, mere negligence is not enough, even though it is so extreme as to be characterized as "gross," a term of ill-defined content, which occasionally, in a few jurisdictions, has been stretched to include the element of conscious indifference to consequences, and so to justify punitive damages.[16]

Among the restrictions that have been proposed with regard to punitive damages, besides that they be capped, are (1) that the circumstances in which they may be awarded be narrowed, (2) that plaintiffs be required to prove by "clear and convincing" evidence that they are entitled to them (instead of having to prove it by a mere "preponderance of the evidence."), (3) that liability for punitive damages be determined in a separate proceeding from liability for compensatory damages, and (4) that punitive damages be paid in part to the government or to a fund that serves a public purpose instead of to the plaintiff.[17] See **Table A-3** for a 50-state survey of the burden of proof standards for punitive damages and whether a state requires a separate proceeding to determine such damages.

Section 7 of H.R. 5 would limit punitive damages to the greater of $250,000 or two times the amount of economic damages awarded, although a jury would not be informed of the limitation.[18] Punitive damages would not be awarded in a health care lawsuit where a judgment for compensatory (i.e., economic and noneconomic) damages is not rendered.[19]

Under the bill, a claimant would not be permitted to make a demand for punitive damages when initially filing the health care lawsuit. Upon a motion by the claimant, a court would be permitted to allow the claimant to amend his or her pleading only after a hearing and a finding by the court that the claimant has established by a substantial probability that he or she will prevail on the claim for punitive damages.[20] H.R. 5 provides that punitive damages only would be awarded if it is proven by clear and convincing evidence that the defendant acted with malicious intent to injure or that the defendant deliberately failed to avoid unnecessary injury that he or she knew the

[15] In 1851, the Supreme Court wrote: "It is a well-established principle of the common law, that in actions ... for torts, a jury may inflict what are called exemplary, punitive, or vindictive damages upon a defendant, having in view the enormity of his offense rather than the measure of compensation to the plaintiff. We are aware that the propriety of this doctrine has been questioned by some writers." Day v. Woodworth, 54 U.S. (13 How.) 363, 371 (1851).

[16] W. Page Keeton, *supra* note 3, § 2.

[17] In *BMW of North American, Inc. v. Gore*, 517 U.S. 559, 616 (1996), the Supreme Court listed state statutes that provide for this restriction.

[18] H.R. 5, § 7(b)(2).

[19] Like noneconomic damages, it is possible that a state's law on punitive damages would not be affected. Section 11 of H.R. 5 provides that the bill would not preempt "any State law (whether effective before, on or after the date of enactment ...) that specifies a particular monetary amount of compensation or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, *regardless of whether such monetary amount is greater or lesser* than is provided for under this Act" (emphasis added). H.R. 5 § 11(c)

[20] H.R. 5, § 7(a).

claimant would suffer.[21] Malicious intent to injure would be defined as intentionally causing or attempting to cause physical injury other than providing health care goods or services.[22]

After the claimant is permitted to amend his pleading to make a demand for punitive damages, either party would be allowed to request that the trier of fact consider (1) whether punitive damages are to be awarded and the amount of such award, and (2) the amount of punitive damages following a determination of punitive liability. If there is a separate proceeding, then no evidence relevant to the claim for punitive damages would be admissible in any proceeding to determine whether compensatory damages, which cover both economic and noneconomic damages, are to be awarded.[23] In determining the amount of punitive damages, the trier of fact would be required to consider only the following: (1) the severity of the harm caused by the conduct of such party; (2) the duration of the conduct or any concealment of it by such party; (3) the profitability of the conduct to such party; (4) the number of products sold or medical procedures rendered for compensation, as the case may be, that caused the harm complained of by the claimant; (5) any criminal penalties imposed on such party as a result of the conduct complained of; and (6) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.[24]

Arguments For Caps on Punitive Damages

Similar to the arguments for capping noneconomic damages, advocates argue that a lack of cap on punitive damages contributes to instability in the insurance system, among other things.[25] Critics charge that punitive damage awards in medical malpractice cases "are often unfair, arbitrary and unpredictable, and result in overkill.... [and] that reform is needed because there has been an outpouring of 'the most outrageous punitive damage awards' in medical malpractice."[26] Although it has been acknowledged that punitive damage awards occur in a small number of cases, "they can have a devastating impact on individual defendants and can impose big costs on the economy as a whole."[27]

Arguments Against Caps on Punitive Damages

Some argue that a cap on punitive damages does not lead to a reduction in medical malpractice insurance premiums[28] and that awards are not "multimillion dollar jackpots," because of skewed

[21] H.R. 5, § 7(a).

[22] H.R. 5, § 9(13)

[23] H.R. 5, § 7(a).

[24] H.R. 5, § 7(b).

[25] John C. Nelson, M.D., AMA President-Elect, *AMA To Congress: Our Nation's Liability System Threatens Patients' Access to Health Care* (Oct. 2003). *See also* Steven Salbu, *Developing Rational Punitive Damage Policies: Beyond the Constitution*, 49 Fla. L. Rev. 247 (1997).

[26] Michael Rustad and Thomas Koenig, *Reconceptualizing Punitive Damages in Medical Malpractice: Targeting Amoral Corporations, Not "Moral Monsters,"* 47 Rutgers L. Rev. 975, 978, 980-981 (1995).

[27] Mark Thompson, *Applying the Brakes to Punitives—But is There Anything to Slow Down?*, American Bar Association Journal (Sept. 1997) at 68, 69.

[28] Adam Glassman, *The Imposition of Federal Caps in Medical Malpractice Liability Actions: Will They Cure the Current Crisis in Health Care?*, 37 Akron L. Rev. 417 (2004).

data.[29] Because punitive damages are meant to deter others, it has been said that they "must be allowed to fill the gaps the criminal law leaves open."[30] Finally, plaintiffs often do not recover the amounts that juries award, because trial judges often reduce punitive damages awards that they find excessive. Furthermore, a recent Supreme Court decision "makes it easier for appellate courts to reduce punitive damages."[31] It has been reported that "[s]ometimes, even before a jury rules, a plaintiff has signed an agreement that limits how much money actually changes hands."[32]

Periodic Payment of Damages

Traditionally, damages are paid in a lump sum, even if they are for future medical care or future lost wages. In recent years, however, "attorneys for both parties in damages actions have occasionally foregone lump-sum settlements in favor of structured settlements, which give the plaintiff a steady series of payments over a period of time through the purchase of an annuity or through self-funding by an institutional defendant."[33] Many forms of periodic payment statutes exist throughout the United States, and they can involve complicated calculations, "creating barriers for those who use the periodic payment process."[34]

Proposals concerning the periodic payment of damages have been applied to future damages as well as to all damages. An issue that may arise in connection with awards of future damages is whether such awards should be converted to present value. Not to require such conversion "could be a very major change, significantly reducing awards, if it is intended to allow a defendant to pay, for example, a $1 million award over a 10-year period at $100,000 a year."[35] Yet, if a jury is required to convert an award—an annuity with a present value of $1 million—into its present value, then the reform doesn't mean that much. As a practical matter, the defendant would be paying the same amount as before, because it would have to spend $1 million for an annuity that, as it earned interest over the years of its distribution, would yield the plaintiff more than $1 million. Had the defendant paid the plaintiff a lump sum of $1 million, then the plaintiff could have purchased that same annuity.[36]

If Congress addresses periodic payment of future damages, it may consider utilizing the Uniform Periodic Payment of Judgments Act for guidance. For example, the uniform act includes sections that would account for inflation and for the effect of the plaintiff's death on unpaid amounts. Section 5(a) of the uniform act provides that, in a trial, "evidence of future changes in the purchasing power of the dollar is admissible on the issue of future damages." Section 13 provides

[29] American Association for Justice, *Medical Negligence: A primer for the Nation's Health Care Debate* at 10.

[30] Lisa M. Broman, *Punitive Damages: An Appeal for Deterrence*, 61 Neb. L. Rev. 651, 680 (1982).

[31] Tania Zamorsky, *Impact of High Court's Ruling In "Leatherman": Punitive awards reduced in four cases*, National Law Journal (Aug. 1, 2001), *citing* Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001), which held that appellate courts should perform *de novo* review, rather than apply an abuse-of-discretion standard, when determining whether punitive damages are excessive in violation of the Eighth Amendment.

[32] Joseph T. Hallinan, *In Malpractice Trials, Juries Rarely Have the Last Word*, Wall Street Journal (Nov. 30, 2004).

[33] Annotation, *Propriety and Effect of "Structured Settlements" Whereby Damages are Paid in Installments Over a Period of Time, and Attorneys' Fees Arrangements in Relation Thereto*, 31 ALR 4th 95, 96.

[34] Paul J. Lesti, Structured Settlements § 21.5 (2d ed., 1993).

[35] Victor E. Schwartz, *Doctors' Delight, Attorneys' Dilemma*, Legal Times, Health-Care Law Supplement (Feb. 28, 1994) at 30.

[36] *Id.*

that "liability to a claimant for periodic payments not yet due for medical expenses terminates upon the claimant's death." Damages for other economic losses, however, except in actions for wrongful death, must be paid to the plaintiff's estate. See **Table A-4** for a 50-state survey of whether periodic payment of damages is to be considered in an award for a medical malpractice action.

Section 8 of the bill would permit any party to request to the court that future damages be paid by period payment, if an award of future damages is made that equals or exceeds $50,000, without a reduction to a present value. This would be permitted so long as the party against whom the judgment was made has sufficient insurance or other assets to fund a periodic payment of such judgment. H.R. 5 provides that "the court may be guided by the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws."[37]

Arguments For the Periodic Payment of Damages

Advocates argue that generally, both parties are benefitted by a period payment scheme because the defendant need not immediately pay out a large sum of money, and the plaintiff is prevented from dissipating a recovery and is provided a secure, tax-free income for a long period, without having to assume the costs and risks of managing an investment portfolio.[38] Periodic payments are not very different than the structured settlements that lawyers utilize in other transactions. "Periodic payment of malpractice awards is nothing more than what lawyers have been doing for years in structured settlements. It is workable and often the only means of providing full compensation for an injured claimant when resources are otherwise unavailable."[39]

Arguments Against the Periodic Payment of Damages

Some argue that if periodic payments will in fact benefit plaintiffs, then they will agree to them, as they sometimes do, without the need for legislation. Some plaintiffs may prefer to invest their awards themselves and not risk the insolvency of the defendant or the company from which the defendant purchases an annuity.

Limiting Joint and Several Liability

Joint and several liability is the common-law rule that, if more than one defendant is found liable for a plaintiff's injuries, then each defendant may be held 100% liable. A plaintiff may not recover more than once, but he may recover all his damages from fewer than all liable defendants. Any defendant who pays more than its share of the damages is entitled to seek contribution from other liable defendants.

[37] This uniform act was promulgated in 1990; it was preceded by the 1980 Model Periodic Payment of Judgments Act. Both appear in volume 14 of the UNIFORM LAWS ANNOTATED.

[38] *Annotation, supra* note 33, at 96.

[39] A. Blackwell Stieglitz, *Defense Counsel Will Find the President's Medical Malpractice Proposals So Benign as to be Meaningless*, National Law Journal (Jan. 17, 1994) at 27.

Some states have eliminated joint and several liability, making each defendant liable only for its share of responsibility for the plaintiff's injury. Other states have adopted compromise positions such as eliminating joint and several liability only for noneconomic damages, presumably with the view that it is more important for the plaintiff to recover all his economic damages than all his noneconomic damages; or, eliminating joint and several liability only for defendants responsible for less than a specified percentage (e.g., 50%) of the plaintiff's harm, presumably with the view that it is especially unfair for such defendants to be held liable for up to 100% of the damages. See **Table A-4** for a 50-state survey of whether the doctrine of joint and several liability applies to malpractice actions in a state.

Section 4 of the bill, which primarily addresses a cap on noneconomic damages, also provides that where there are multiple defendants, the bill would make each party responsible for an amount of damages that is in direct proportion to its individual percentage of fault, and it would not make an individual liable for the share of any other person. The trier of fact would determine the responsibility of each party for the claimant's harm.[40]

Arguments For Limiting Joint and Several Liability

Advocates of abolishing or limiting joint and several liability argue that it

> frequently operates in a highly inequitable manner—sometimes making defendants with only a small or even *de minimis* percentage of fault liable for 100% of plaintiff's damage. Accordingly, joint and several liability in the absence of concerted action has led to the inclusion of many 'deep pocket' defendants such as governments, larger corporations, and insured entities whose involvement is only tangential and who probably would not be joined except for the existence of joint and several liability.[41]

Arguments Against Limiting Joint and Several Liability

Advocates of joint and several liability cite the reason that the common law adopted it: it is preferable for a wrongdoer to pay more than its share of the damages than for an injured plaintiff to recover less than the full compensation to which he is entitled.

Abolishing the Collateral Source Rule

The collateral source rule is the common-law rule that allows an injured party to recover damages from the defendant even if he is also entitled to receive them from a third party. Common third parties, that is, collateral sources, include a health insurance company, an employer, or the government. To abolish the collateral source rule would be to allow or require courts to reduce damages by amounts a plaintiff receives or is entitled to receive from collateral sources.

[40] H.R. 5, § 4(d).

[41] *Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability* 64 (Feb. 1986).

Often a collateral source, such as a health insurer or the government, has a right of subrogation against the tortfeasor (the person responsible for the injury).[42] This means that the collateral source takes over the injured party's right to sue the tortfeasor, for up to the amount the collateral source owes or has paid the injured party. Though the collateral source rule may enable the plaintiff to recover from both his insurer and the defendant, if there is subrogation, the plaintiff must reimburse his insurer the amount it paid him. If the collateral source rule were eliminated, then the defendant would not have to pay the portion of damages covered by a collateral source, and the collateral source would apparently not be able to recover the amount it paid the plaintiff through subrogation. In the medical malpractice context, therefore, eliminating the collateral source rule would benefit liability insurers at the expense of health insurers.

Some jurisdictions, however, have abolished the collateral source rule only in cases in which there is no right of subrogation. In jurisdictions where there is no right of subrogation, the collateral source would be unaffected by elimination of the collateral source rule (i.e., the health insurer would still not recover its money), and the defendant would benefit by not having to pay the plaintiff.[43]

Some proposals to abolish the collateral source rule have taken into account that the plaintiff may have paid insurance premiums for his collateral source benefit. Such proposals, instead of allowing a damage award to be reduced by the full amount of a collateral source benefit, allow it to be reduced by the full amount of a collateral source benefit minus the amount the plaintiff paid to secure that benefit. Other proposals would allow the defendant to introduce evidence of collateral source payments, but do not specify whether the jury must reduce economic damages awards by the amount of such payments.

Eliminating the collateral source rule could also indirectly reduce noneconomic damages awards, because juries often set such awards as a multiple of economic damages. If the collateral source rule were abolished, then the plaintiff could disclose to the jury only her out-of-pocket expenses, or she could disclose her total economic damages before collateral source payments are deducted. If the former, then the plaintiff might receive a lesser award of noneconomic damages.

H.R. 5 included a provision on collateral source benefits and introduction of evidence. An amendment that was adopted during the House Committee on the Judiciary mark-up eliminated this provision from the bill.[44]

Arguments For Abolishing the Collateral Source Rule

Advocates of abolishing the collateral source rule object to the fact that it "permits the plaintiff to obtain double recovery for certain components of his damages award," unless the collateral

[42] The Medical Care Recovery Act, 42 U.S.C. § 2651(a), provides: "In any case in which the United States is authorized or required by law to furnish or pay for hospital, medical, surgical, or dental care and treatment ... to a person who is injured or suffers a disease ... under circumstances creating a tort liability upon some third person ..., the United States shall have a right to recover ... from said third person, or that person's insurer, the reasonable value of the care and treatment ... and shall as to this right be subrogated to any right or claim that the injured or diseased person ... has against such third person to the extent of the reasonable value of the care and treatment...."

[43] Michael F. Flynn, *Private Medical Insurance and the Collateral Source Rule: A Good Bet?*, 22 U. Told. L. Rev. 39, 49 (1990).

[44] Amendment 14 to H.R. 5.

source is subrogated to the plaintiff's claim against the defendants.[45] Abolishing the collateral source rule will reduce damage awards without denying plaintiffs full recovery of their damages.

Arguments Against Abolishing the Collateral Source Rule

Advocates of the collateral source rule cite the reason that the common law adopted it: it is preferable for the victim rather than the wrongdoer to profit from the victim's prudence (as in buying health insurance) or good fortune (in having some other collateral source available). One commentator has also noted that, when the collateral source is the government, and the benefit it provides are future services, such as physical therapy, there is no guarantee that it will provide such services for as long as they are needed, as government programs may be cut back.[46]

Limiting Attorneys' Contingent Fees

A contingent fee is one in which a lawyer, instead of charging an hourly fee for his services, agrees, in exchange for representing a plaintiff in a tort suit, to accept a percentage of the recovery if the plaintiff wins or settles, but to receive nothing if the plaintiff loses. Payment is thus contingent upon there being a recovery. Plaintiffs agree to this arrangement in order to afford representation without paying anything out-of-pocket, and lawyers agree to it because the percentage they receive—usually from 33⅓% to 40%—generally amounts to more than an hourly fee would. Many states regulate contingent fees in medical malpractice cases in one or more of the following ways: "(1) establishment of a sliding scale for the attorney fees; (2) establishment of a maximum percentage of the award that may be paid for attorney fees; and (3) provision for court review of the reasonableness of the attorney fees."[47]

Legislation to limit contingency fees might consider specifying whether plaintiffs' attorneys would be allowed to add costs, including expert-witness fees, travel, and photocopying on top of the cap, or whether costs would only be recovered from the amount the attorney recoups under the cap. In medical malpractice cases, where costs can skyrocket, the difference is significant. See **Table A-5** for a 50-state survey of limits on attorneys' contingency fees.

Section 5 of the H.R. 5 would empower the court to supervise the arrangements for the payment of damages to protect against conflicts of interest (e.g., a claimant's attorney having a financial stake in the outcome by virtue of a contingency fee). The court would have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect the damages to the claimant.

The bill would impose a sliding scale for attorney fees. In any health care lawsuit, the total of all contingency fees for representing all claimants would not exceed (1) 40% of the first $50,000 recovered by the claimant(s); (2) 33⅓ % of the next $50,000 recovered by the claimant(s); (3) 25% of the next $500,000 recovered by the claimant(s); and (4) 15% of any amount where the

[45] *Report of the Tort Policy Working Group, supra* note 35.

[46] Barry J. Nace and Virginia C. Nelson, *Plaintiffs' Lawyers Have Already Seen Many of the Proposed Tort Reforms in the States, and Find Them Disastrous for Clients*, National Law Journal (Jan. 17, 1994) at 29.

[47] *See* National Conference of State Legislatures, *State Medical Malpractice Laws 2010*, available at http://www.ncsl.org/default.aspx?tabid=18516.

recovery is in excess of $600,000. The sliding scale would be applicable regardless of whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.[48]

Arguments For Limiting Attorneys' Contingent Fees

Advocates of limiting contingent fees argue that such fees cause juries to inflate verdicts, result in windfalls for lawyers, and prompt lawyers to file frivolous suits in the hope of settling. They also argue that, where there is no dispute as to liability, but only as to damages, there is no contingency and therefore no justification for contingent fees. One study proposed that, if a defendant makes a prompt settlement offer, then counsel fees be "limited to hourly rate charges and capped at 10% of the first $100,000 of the offer and 5% of any greater amounts.... When plaintiffs reject defendants' early offers, contingency fees may only be charged against net recoveries in excess of such offers."[49]

Arguments Against Limiting Attorneys' Contingent Fees

Opponents of limiting contingent fees argue that such fees enable injured persons, faced with medical bills and lost wages, to finance lawsuits that they otherwise could not afford—especially if their injuries have disabled them from working. They argue that lawyers are unlikely to file frivolous lawsuits if they stand to recover nothing if they lose,[50] and that studies have shown that contingent fees do not encourage frivolous lawsuits.[51] Finally, they note, "[a]n hourly fee arrangement [such as defendants' lawyers use] can encourage delay, inefficiency, and unnecessary action," whereas "[a] contingent fee is an added inducement for a lawyer to be efficient and expeditious."[52]

Creating a Federal Statute of Limitations

The statute of limitations—the period within which a lawsuit must be filed—for medical malpractice suits under state law is typically two or three years, starting on the date of injury. Sometimes, however, the symptoms of an injury do not appear immediately, or even for years after, malpractice occurs. Many states therefore have adopted a "discovery" rule, under which the statute of limitations starts to run only when the plaintiff discovers, or in the exercise of reasonable diligence, should have discovered, his injury—or, sometimes, his injury and its cause. Plaintiffs would favor allowing a statute of limitations to run only upon discovery of an injury and its cause because it may take additional time after symptoms become manifest to discover that an injury was caused by medical malpractice. See **Table A-6** for a 50-state survey on general

[48] H.R. 5, § 5.

[49] The Manhattan Institute, *Rethinking Contingency Fees* 28, 29 (1994).

[50] Stephen Daniels and Joanne Martin, *It's Deja Vu All Over Again: Plaintiff's Lawyers and the Evolution of Tort Law and Practice in Texas*, American Bar Foundation (Mar. 2009), http://www.americanbarfoundation.org/research/project/20.

[51] *See* studies cited in Association of Trial Lawyers of American, *Keys to the Courthouse: Quick Facts on the Contingent Fee System* (1994) at 4, 5.

[52] *Id.* at 6.

statute of limitation provisions for both medical malpractice and product liability actions, as some tort reform proposals' provisions would affect the statute of limitations for both types of actions.

Section 3 of H.R. 5 would require a health care lawsuit to be brought within either three years after the date of manifestation of the injury, or within one year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. No lawsuit could be brought after three years of the date of manifestation of the injury, but such a limitation could be extended upon a showing of (1) proof of fraud; (2) intentional concealment; or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured party. For minors, the action must be commenced within three years from the date of the manifestation of injury, except that actions by a minor under the full age of six must be commenced within three years of the manifestation of the injury or prior to the minor's eighth birthday, whichever provides a longer period. In the event of fraud, the statute of limitations for a minor could be tolled.[53]

[53] To toll the statute of limitations means to stop its running.

Appendix. Fifty-State Surveys

Table A-1 sets forth the definition of a medical malpractice action in the 50 states. As not all states use the words "medical malpractice action" in their statutes, this table was compiled by using variations and combinations of the terms *medical, health care, liability, malpractice, negligence, injury,* and *claim*. This table does not cover the definition of malpractice actions where a state had a separate statutory scheme for other medical specialties, for example, dentistry. Where possible, this table provides state definitions of medical malpractice or health care liability action and to whom such provisions apply. Where a state had provisions on medical liability tort reform but no explicit definition of a medical malpractice action, the table reflects to which groups these provisions apply to give a sense of the scope of the parties that are covered under the medical malpractice statutes. For example, if the state had a specific statute of limitation on actions for medical malpractice, the table provides the definition of "health care provider" as used applicable to that statute. Where "no statute found" is entered means that there may have been state statutes governing medical malpractice actions, but that CRS could not identify a specific provision that defines an action for medical malpractice, or similar phrases, or a specific definition of the individuals to whom the provisions apply.

Table A-1. State Definitions of Medical Malpractice or Health Care Lawsuit

State	Definition
Alabama	**Ala. Code § 6-5-481 (2011) Medical Liability Actions: Definitions.** "Medical liability" means a finding by a judge, jury, or arbitration panel that a physician, dentist, medical institution, or other health care provider did not meet the applicable standard of care, and that such failure was the proximate cause of the injury complained of, resulting in damage to the patient.
Alaska	**Alaska Stat. § 09.55.560 (2011) Medical Malpractice Actions: Definitions.** "Professional negligence" means a negligent act or omission by a health care provider in rendering professional services. "Health care provider" means an acupuncturist licensed under AS 08.06; an audiologist or speech-language pathologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician or physician assistant licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 47.32.900, including a governmentally owned or operated hospital; an employee of a health care provider acting within the course and scope of employment; an ambulatory surgical facility and other organizations whose primary purpose is the delivery of health care, including a health maintenance organization, individual practice association, integrated delivery system, preferred provider organization or arrangement, and a physical hospital organization.
Arizona	**Ariz. Rev. Stat. § 12-561 (2011) Actions Relating To Health Care: Definitions.** "Medical malpractice action" or "cause of action for medical malpractice" means an action for injury or death against a licensed health care provider based upon such provider's alleged negligence, misconduct, errors or omissions, or breach of contract in the rendering of health care, medical services, nursing services or other health-related services or for the rendering of such health care, medical services, nursing services or other health-related services, without express or implied consent including an action based upon the alleged negligence, misconduct, errors or omissions or breach of contract in collecting, processing or distributing whole human blood, blood components, plasma, blood fractions or blood derivatives. "Licensed health care provider" means both: (a) a person, corporation or institution or certified by the state health care, medical services or health-related services and includes the officers, employees and agents thereof working under the supervision of such person, corporation or institution in providing such health care, medical services, nursing services or other health-related services; (b) a federally licensed, regulated or registered blood bank, blood center or plasma center collecting, processing or distributing whole human blood, blood components, plasma, blood fractions or derivatives for use by licensed health care provider and includes officers, employees, agents working under the supervision of the blood bank, blood center or plasma center.

State	Definition
Arkansas	**Ark. Code Ann. § 16-114-201 (2010) Actions for Medical Injury: Definitions.** As used in this subchapter, unless the context otherwise requires: "Action for medical injury" means any action against a medical care provider, whether based in tort, contract, or otherwise, to recover damages on account of medical injury; "Medical care provider" means a physician, certified registered nurse anesthetist, physician's assistant, nurse, optometrist, chiropractor, physical therapist, dentist, podiatrist, pharmacist, veterinarian, hospital, nursing home, community mental health center, psychologist, clinic, or not-for-profit home health care agency licensed by the state or otherwise lawfully providing professional medical care or services, or an officer, employee or agent thereof acting in the course and scope of employment in the providing of such medical care or medical services; and "Medical injury" or "injury" means any adverse consequences arising out of or sustained in the course of the professional services being rendered by a medical care provider, whether resulting from negligence, error, or omission in the performance of such services; or from rendition of such services without informed consent or in breach of warranty or in violation of contract; or from failure to diagnose; or from premature abandonment of a patient or of a course of treatment; or from failure to properly maintain equipment or appliances necessary to the rendition of such services; or otherwise arising out of or sustained in the course of such services.
California	**Cal. Civ. Code §§ 3333.1, 3333.2 (2010) Collateral Benefits and Noneconomic Losses in Medical Malpractice Actions.** "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital. "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractor Initiative Act, or licensed to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. Health care provider includes the legal representatives of a health care provider. ***See also* Cal. Civ. Proc. Code §§ 340.5, 364, 667.7, 1295 (2010)**
Colorado	No statute found.

State	Definition
Connecticut	**Conn. Gen. Stat. § 52-184c (2010) Standard of Care in Negligence Action Against Health Care Provider. Qualifications of Expert Witness.** In any civil action to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, in which it is alleged that such injury or death resulted from the negligence of a health care provider, as defined in section 52-184b, the claimant shall have the burden of proving by the preponderance of the evidence that the alleged actions of the health care provider represented a breach of the prevailing professional standard of care for that health care provider. The prevailing professional standard of care for a given health care provider shall be that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. **Conn. Gen. Stat. § 52-184b (2010) Failure to bill and advance payments inadmissible in malpractice cases.** For the purposes of this section, "health care provider" means any person, corporation, facility or institution licensed by this state to provide health care or professional services, or an officer, employee or agent thereof acting in the course and scope of his employment.
Delaware	**Del. Code Ann. tit. 18, § 6801 (2011) Health Care Medical Negligence Insurance Litigation: Definitions.** "Medical negligence" means any tort or breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider to a patient. The standard of skill and care required of every health care provider in rendering professional services or health care to a patient shall be that degree of skill and care ordinarily employed in the same or similar field of medicine as defendant, and the use of reasonable care and diligence.
District of Columbia	No statute found.
Florida	**Fla. Stat. Ann. § 766.102 (2011) Medical Negligence; Standards of Recovery; Expert Witness.** In any action for recovery of damages based on the death or personal injury of any person in which it is alleged that such death or injury resulted from the negligence of a health care provider as defined in s. 766.202(4), the claimant shall have the burden of proving by the greater weight of evidence that the alleged actions of the health care provider represented a breach of the prevailing professional standard of care for that health care provider. The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. **Fla. Stat. Stat. § 766.202 (2011) Medical Malpractice And Related Matters: Definitions.** "Health care provider" means any hospital, ambulatory surgical center, or mobile surgical facility as defined and licensed under chapter 395; a birth center licensed under chapter 383; any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, part I of chapter 464, chapter 466, chapter 467, or chapter 486; a clinical lab licensed under chapter 483; a health maintenance organization certificated under part I of chapter 641; a blood bank; a plasma center; an industrial clinic; a renal dialysis facility; or a professional association partnership, corporation, joint venture, or other association for professional activity by health care providers.

State	Definition
Georgia	**Ga. Code Ann. § 9-3-70 (2011) Action for Medical Malpractice Defined.** As used in this article, the term "action for medical malpractice" means any claim for damages resulting from the death of or injury to any person arising out of: (1) Health, medical, dental, or surgical service, diagnosis, prescription, treatment, or care rendered by a person authorized by law to perform such service or by any person acting under the supervision and control of the lawfully authorized person; or (2) Care or service rendered by any public or private hospital, nursing home, clinic, hospital authority, facility, or institution, or by any officer, agent, or employee thereof acting within the scope of his employment. **Ga. Code Ann. § 9-9-60 (2011) Arbitration: "Medical malpractice claim" defined.** For the purposes of this article, the term "medical malpractice claim" means any claim for damages resulting from the death of or injury to any person arising out of: (1) Health, medical, dental, or surgical service, diagnosis, prescription, treatment, or care, rendered by a person authorized by law to perform such service or by any person acting under the supervision and control of a lawfully authorized person; or (2) Care or service rendered by any public or private hospital, nursing home, clinic, hospital authority, facility, or institution, or by any officer, agent, or employee thereof acting within the scope of his employment. ***See also* Ga. Code Ann. §§ 9-11-8, 9-11-54 (2011)**
Hawaii	**Haw. Rev. Stat. Ann. § 671-1 (2011) Medical Torts: Definitions.** "Medical tort" means professional negligence, the rendering of professional service without informed consent, or an error or omission in professional practice, by a health care provider, which proximately causes death, injury, or other damage to a patient. "Health care provider" means physician, osteopathic physician, surgeon, or physician assistant licensed under chapter 453, a podiatrist licensed under 463E, a health care facility as defined in section 323D-2, and the employees of any of them. Health care provider shall not mean any nursing institution, nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of the institution or service.
Idaho	**Idaho Code Ann. § 6-1012 (2011) Medical Malpractice: Proof of Community Standard of Health Care Practice in Malpractice Case.** In any case, claim or action for damages due to injury to or death of any person, brought against any physician and surgeon or other provider of health care, including, without limitation, any dentist, physicians' assistant, nurse practitioner, registered nurse, licensed practical nurse, nurse anesthetist, medical technologist, physical therapist, hospital or nursing home, or any person vicariously liable for the negligence of them or any of them, on account of the provision of or failure to provide health care or on account of any matter incidental or related thereto, such claimant or plaintiff must, as an essential part of his or her case in chief, affirmatively prove by direct expert testimony and by a preponderance of all the competent evidence, that such defendant then and there negligently failed to meet the applicable standard of health care practice of the community in which such care allegedly was or should have been provided, as such standard existed at the time and place of the alleged negligence of such physician and surgeon, hospital or other such health care provider and as such standard then and there existed with respect to the class of health care provider that such defendant then and there belonged to and in which capacity he, she or it was functioning. Such individual providers of health care shall be judged in such cases in comparison with similarly trained and qualified providers of the same class in the same community, taking into account his or her training, experience, and fields of medical specialization, if any. If there be no other like provider in the community and the standard of practice is therefore indeterminable, evidence of such standard in similar Idaho communities at said time may be considered. As used in this act, the term "community" refers to that geographical area

State	Definition
	ordinarily served by the licensed general hospital at or nearest to which such care was or allegedly should have been provided.
Illinois	**735 Ill. Comp. Stat. Ann. § 5/2-1704 (2011) Medical Malpractice Action.** As used in this Part, "medical malpractice action" means any action, whether in tort, contract or otherwise, in which the plaintiff seeks damages for injuries or death by reason of medical, hospital, or other healing art malpractice. The term "healing art" shall not include care and treatment by spiritual means through prayer in accord with the tenets and practices of a recognized church or religious denomination.
Indiana	**Ind. Code Ann. § 34-18-2-18 (2011) Malpractice.** "Malpractice" means a tort or breach of contract based on health care or professional services that were provided, or that should have been provided, by a health care provider, to a patient. **Ind. Code Ann. § 34-18-2-14 (2011) Health Care Provider.** "Health care provider" means an individual, a partnership, a limited liability company, a corporation, a professional corporation, a facility, or an institution licensed or legally authorized by this state to provide health care or professional services as a physician, psychiatric hospital, hospital, health facility, emergency ambulance service (IC 16-18-2-107), dentist, registered or licensed practical nurse, physician assistant, midwife, optometrist, podiatrist, chiropractor, physical therapist, respiratory care practitioner, occupational therapist, psychologist, paramedic, emergency medical technician-intermediate, emergency medical technician-basic advanced, or emergency medical technician, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment It also includes: college, university, or junior college that provides health care to a student, faculty member, or employee, and the governing board or a person who is an officer, employee, or agent of the college, university, or junior college acting in the course and scope of the person's employment; a blood bank, community mental health center, community mental retardation center, community health center, or migrant health center; a home health agency (as defined in IC 16-27-1-2); a health maintenance organization (as defined in IC 27-13-1-19)'; a health care organization whose members, shareholders, or partners are health care providers under subdivision (1); a corporation, limited liability company, partnership, or professional corporation not otherwise qualified under this section that, as one its functions, provides health care, or is organized or registered under state law, and is determined to be eligible for coverage as a health care provider under this article for its health care function.
Iowa	**Iowa Code Ann. § 614.1 (2010) Limitations on Actions. Period.** Limitation on time for "malpractice" which is an action founded on injuries to persons for wrongful death against any physician and surgeon, osteopathic physician and surgeon, dentist, podiatrist, physician, optometrist, pharmacist, chiropractor, physician assistant, or nurse, licensed under chapter 147, or hospital licensed under chapter 135B, arising out of patient care.
Kansas	No statute found.

State	Definition
Kentucky	**Ky. Rev. Stat. Ann. § 304.40-260 (2010) Health Care Malpractice Insurance Claims: Definitions.** As used in KRS 304.40-250 to 304.40-320, the following words and terms shall be defined as follows: "Malpractice" means any tort or breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider to the patient, "Health care" means any act, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider to a patient during that patient's care, treatment, or confinement for a physical or mental condition.
Louisiana	**La. Rev. Stat. Ann. 40:1299.41 (2011) Medical Malpractice: Definitions and general applications.** "Malpractice" means any unintentional tort or any breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient, including failure to render services timely and the handling of a patient, including loading and unloading of a patient, and also includes all legal responsibility of a health care provider arising from acts or omissions during the procurement of blood or blood components, in the training or supervision of health care providers, or from defects in blood, tissue, transplants, drugs, and medicines, or from defects in or failures of prosthetic devices implanted in or used on or in the person of a patient.
Maine	No statute found.
Maryland	**Md. Code Cts. & Jud. Proc. Code Ann. § 3-2A-01 (2011) Health Care Malpractice Claims: Definitions.** "Medical injury" means injury arising or resulting from the rendering or failure to render health care. "Health care provider" means a hospital, a related institution as defined in § 19-301 of the Health - General Article, a medical day care center, a hospice care program, an assisted living program, a freestanding ambulatory care facility as defined in § 19-3B-01 of the Health - General Article, a physician, an osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified social worker-clinical, and a physical therapist, licensed or authorized to provide one or more health care services in Maryland. "Health care provider" does not include any nursing institution conducted by and for those who rely upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination.

State	Definition
Massachusetts	**Mass. Ann. Laws, ch. 231, § 60B (2010) Tribunal for Screening of Medical Malpractice Claims; Evidence Considered; Subpoena Power; Witnesses; Bond Requirements; Provider of Health Care Defined.** Every action for malpractice, error or mistake against a provider of health care shall be heard by a tribunal consisting of a single justice of the superior court, a physician licensed to practice medicine in the commonwealth under the provisions of section two of chapter one hundred and twelve and an attorney authorized to practice law in the commonwealth, at which hearing the plaintiff shall present an offer of proof and said tribunal shall determine if the evidence presented if properly substantiated is sufficient to raise a legitimate question of liability appropriate for judicial inquiry or whether the plaintiff's case is merely an unfortunate medical result. For the purposes of this section, a provider of health care shall mean a person, corporation, facility or institution licensed by the commonwealth to provide health care or professional services as a physician, hospital, clinic or nursing home, dentist, registered or licensed nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, social worker, or acupuncturist, or an officer, employee or agent thereof acting in the course and scope of his employment.
Michigan	**Mich. Comp. Laws. Serv. § 600.2912a (2011) Action alleging malpractice; Burden of Proof.** **I**n an action alleging malpractice, the plaintiff has the burden of proving that in light of the state of the art existing at the time of the alleged malpractice: (a) The defendant, if a general practitioner, failed to provide the plaintiff the recognized standard of acceptable professional practice or care in the community in which the defendant practices or in a similar community, and that as a proximate result of the defendant failing to provide that standard, the plaintiff suffered an injury. (b) The defendant, if a specialist, failed to provide the recognized standard of practice or care within that specialty as reasonably applied in light of the facilities available in the community or other facilities reasonably available under the circumstances, and as a proximate result of the defendant failing to provide that standard, the plaintiff suffered an injury.
Minnesota	**Minn. Stat. Ann. § 541.076 (2010) Health Care Provider Action: Limitation of Time.** For purposes of this section, "health care provider" means a physician, surgeon, dentist, occupational therapist, or other health care professionals as defined in section 145.61, hospital, treatment or facility.
Mississippi	**Mississippi Code Ann. § 15-1-36 (2010) Actions for Medical Malpractice: Limitation of Time.** Specific time limitation for an action against a licensed physician, osteopath, dentist, hospital, nurse, pharmacist, podiatrist, optometrist or chiropractor for injuries or wrongful death arising out of course of medical, surgical, or other professional services.

State	Definition
Missouri	**Missouri § 516.015 (2011) Statute of Limitations: Actions against health care providers (medical malpractice).** Actions against physicians, hospitals, dentists, registered or licensed practical nurses, optometrists, podiatrists, pharmacists, chiropractors, professional physical therapists, and any other entity providing health care services and all employees of any of the foregoing acting in the course and scope of their employment, for damages for malpractice, negligence, error or mistake related to health care. **Missouri § 538.205 (2011) Tort Actions Based on Improper Health Care. Definitions.** "Health care provider" means any physician, hospital, health maintenance organization, ambulatory surgical center, long-term facility, dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional physical therapist, psychologist, physician-in-training, and any other entity that provides health care services under the authority of a license or certificate. "Health care services" means any services rendered by a health care provider in the ordinary course of the health care provider's profession, or, if the health care provider is an institution, in the ordinary course of furthering the purposes for which is organized. Professional services shall include, but are not limited to, transfer to a patient of goods or services incidental to or pursuant to the practice of the health care provider's profession.
Montana	**Mont. Code Ann. § 25-9-411 (2010) (Temporary)Medical malpractice Noneconomic Damages Limitation.** "Malpractice claim" means a claim based on a negligent act or omission by a health care provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful death. **Mont. Code Ann. § 27-6-103 (2010) Montana Medical Legal Panel Act: Definitions.** "Malpractice claim" means a claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care that proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.
Nebraska	**Neb. Rev. Stat. Ann. § 44-2810 (2010) Nebraska Hospital-Medical Liability Act: Malpractice or Professional Negligence, Defined.** Malpractice or professional negligence shall mean that, in rendering professional services, a health care provider has failed to use the ordinary and reasonable care, skill, and knowledge ordinarily possessed and used under like circumstances by members of his profession engaged in a similar practice in his or in similar localities. In determining what constitutes reasonable and ordinary care, skill, diligence on the part of a health care provider in a particular community, the test shall be that which health care providers, in the same community or similar communities and engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients under like circumstances. **Neb. Rev. Stat. Ann. § 44-2803 (2010) Nebraska Hospital-Medical Liability Act; Health Care Provider, Defined.** Health care provider means: (1) a physician; (2) a certified registered nurse anesthetist; (3) an individual, partnership, limited liability company, corporation, association, facility, institution, or other entity authorized by law to provide professional medical services by physicians or certified nurse anesthetists; (4) a hospital; or (5) a personal representative as defined in section 30-2209 who is successor or assignee of any health care provider designated in subdivisions (1)-(4).

State	Definition
Nevada	**Nev. Rev. Stat. Ann. § 41A.009 (2010) Actions for Medical or Dental Malpractice: "Medical malpractice" Defined.** "Medical malpractice" means the failure of a physician, hospital or employee of a hospital, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances. **Nev. Rev. Stat. Ann. § 630A.060 (2010) Homeopathic Medicine: "Malpractice" Defined.** "Malpractice" means failure on the part of a homeopathic physician to exercise the degree of care, diligence and skill ordinarily exercised by homeopathic physicians in good standing in the community in which he or she practices. As used in this section, "community" embraces the entire area customarily served by homeopathic physicians among whom a patient may reasonably choose, not merely the particular area inhabited by the patients of that individual physician or the particular city or place where the homeopathic physician has an office. **Nev. Rev. Stat. Ann. § 633.071 (2010) Osteopathic Medicine: "Malpractice" Defined.** "Malpractice" means failure on the part of an osteopathic physician to exercise the degree of care, diligence and skill ordinarily exercised by osteopathic physicians in good standing in the community in which he or she practices.
New Hampshire	**N.H. Rev. Stat. Ann. § 507-C:1 (2011) Actions for Medical Injury: Definitions.** "Action for medical injury" means any action against a medical care provider, whether based in tort, contract, or otherwise, to recover damages on account of medical injury. "Medical care provider" means a physician's assistant, registered or licensed practical nurse, hospital, clinic or not-for-profit home health care agency licensed by the state or otherwise lawfully providing medical care or services, or an officer, employee or agent thereof acting in the course and scope of employment. "Medical injury" or "injury" means any adverse, untoward or undesired consequences arising out of or sustained in the course of professional services rendered by a medical care provider, whether resulting from negligence, error or omission in the performance of such services; from rendition of such services without informed consent or in breach of warranty or in violation of contract; from failure to diagnose; from premature abandonment of a patient or of a course of treatment; from failure properly to maintain equipment or appliances necessary to the rendition of such services; or otherwise arising out of sustained in the course of such service. ***See also* N.H. Rev. Stat. Ann. § 507-E: 1 (2011) Medical Injury Actions Definitions.**
New Jersey	No statute found.
New Mexico	**N.M. Stat. Ann. § 41-5-3 (2010) Medical Malpractice Act: Definitions.** "Malpractice claim" includes any cause of action arising in this state against a health care provider for medical treatment, lack of medical treatment or other claimed departure from accepted standards of health care which proximately results in injury to the patient, whether the patient's claim or cause of action sounds in tort or contract, and includes but is not limited to actions based on battery or wrongful death; "malpractice claim" does not include a cause of action arising out of the driving, flying or nonmedical acts involved in the operation, use or maintenance of a vehicular or aircraft ambulance. "Health care provider" means a person, corporation, organization, facility or institution licensed or certified by this state to provide health care or professional services as a doctor of medicine, hospital, outpatient health care facility, doctor of osteopathy, chiropractor, podiatrist, nurse anesthetist or physician's assistant.
New York	No statute found.

State	Definition
North Carolina	**N.C. Gen. Stat. § 90-21.11 (2010) Medical Malpractice Actions: Definitions.** As used in this Article, the term "medical malpractice action" means a civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider. As used in this Article, the term "health care provider" means without limitation any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital or a nursing home; or any other person who is legally responsible for the negligence of such person, hospital or nursing home; or any other person acting at the direction or under the supervision of any of the foregoing persons, hospital, or nursing home.
North Dakota	**N.D. Cent. Code § 32-42-01 (2011) Alternative Dispute Resolution: Definitions.** "Health care malpractice action" means a claim for relief brought against a health care provider, or other defendant joined in the action, regardless of the theory of liability on which the claim is based, in which the claimant alleges a health care malpractice claim. "Health care malpractice claim" means a claim brought against a health care provider or other defendant joined in a claim alleging that an injury was suffered by the claimant as a result of health care negligence or gross negligence, breach of express or implied warranty or contract, failure to discharge a duty to warn, or failure to obtain consent arising from the provision of or failure to provide health care services. "Health care negligence" means an act or omission by a health care provider which deviates from the applicable standard of care and causes an injury.
Ohio	**Ohio Rev. Code Ann. § 2305.113 (2011) Time Limitations for Bringing Medical, Dental, Optometric, or Chiropractic Claims.** "Medical claim" means any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person.
Oklahoma	**Okla. Stat. tit. 63, § 1-1708.1C (2010) Affordable Access To Health Care Act: Definitions.** "Medical liability action" means any civil action involving, or contingent upon, personal injury or wrongful death brought against a health care provider based on professional negligence. "Health care provider" means any person or other entity who is licensed pursuant to provision Title 59 or Title 63 of the Oklahoma Statutes, or pursuant to the laws of another state, to render health care services in the practice of a profession or in the ordinary course of business. "Health care services" means any services provided by a health care provider, or by an individual working under the supervision of a health care provider, that relate to diagnosis, assessment, prevention, treatment or care of any human illness, disease, injury or condition.
Oregon	No statute found.

State	Definition
Pennsylvania	**42 Pa. Cons. Stat. § 5101.1, 40 (2010) Venue in Medical Professional Liability Actions. 40 Pa. Cons. Stat. § 1303.103 (2010) Medical Care Availability and Reduction of Error Act.** "Medical professional liability action" means any proceeding in which a medical professional liability claim is asserted, including an action in a court of law or an arbitration proceeding. "Medical professional liability claim" means any claim seeking the recovery of damages or loss from a health care provider arising out of any tort or breach of contract causing injury or death resulting from the furnishing of health care services which were or should have been provided. "Health care provider" means any primary health care center, a personal care home licensed by the Department of Public Welfare, or a person including a corporation, university or other education institution licensed or approved by the Commonwealth to provide health care or professional medical services as a physician, certified nurse midwife, a podiatrist, hospital, nursing home, birth center, and an officer, employee or agent of any of them acting in the course and scope of employment.
Rhode Island	**R.I. Gen. Laws § 5-37-1 (2011) Board Of Medical Licensure And Discipline: Definitions.** "Medical malpractice" or "malpractice" means any tort, or breach of contract based on health care or professional services rendered, or which should have been rendered, by a physician, dentist, hospital, clinic, health maintenance organization or professional service corporation providing health care services and organized under chapter 5.1 of title 7, to a patient or the rendering of medically unnecessary services except at the informed request of the patient.
South Carolina	**S.C. Code Ann. § 15-79-110 (2010) Medical Malpractice Actions: Definitions.** "Medical malpractice" means doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances. "Health care institution" means an ambulatory surgical facility, a hospital, an institutional general infirmary, a nursing home, and a renal dialysis facility. "Health care provider" means a physician, surgeon, osteopath, nurse, oral surgeon, dentist, pharmacist, chiropractor, optometrist, podiatrist, or any similar category of licensed health care provider, including health care practice, association, partnership, or other legal entity.
South Dakota	**S.D. Codified Laws § 15-2-14.1 (2010) Medical Malpractice Action: Two-year limitation.** An action against a physician, surgeon, dentist, hospital, sanitarium, registered nurse, licensed practice nurse, chiropractor, or other practitioner of the health arts for malpractice, error, mistake or failure to cure, whether based upon tort or contract, can be commenced only within two years after the alleged malpractice.
Tennessee	**Tenn. Code Ann. § 56-54-103 (2011) Tennessee Medical Malpractice Reporting Act: Chapter Definitions.** "Medical malpractice" means an actual or alleged negligent act, error, or omission in providing or failing to provide health care services. "Health care provider" means (A) a person licensed in either title 63, except chapter 12, or title 68 to provide health care or related services, including, but not limited to, an acupuncturist, a physician, a surgeon, an osteopathic physician, a dentist, a nurse, an optometrist, a podiatrist, a chiropractor, a physical therapist, a psychologist, a pharmacist, an optician, a physician assistant, a certified professional midwife, an orthopedic physician assistant, or a nurse practitioner.

State	Definition
Texas	**Tex. Civ. Prac. & Rem. Code § 74.001 (2010) Medical Liability: Definitions.** "Health care liability claim" means a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to death of a claimant, whether the claimant's claim or cause of actions sounds in tort or contract. "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed, certified, registered, or chartered by the State of Texas to provide health care, including: a registered nurse; a dentist; a podiatrist; a pharmacist; a chiropractor; an optometrist; or health care institution. (B) The term includes: (i) an officer, director, shareholder, member, partner, manager, owner, or affiliate of a health care provider or physician; and (ii) an employee, independent contractor, or agent of a health care provider or physician acting in the course and scope of the employment or contractual relationship.
Utah	**Utah Code Ann. § 78B-3-403 (2011) Utah Health Care Malpractice Act: Definitions.** "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider. "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, registered nurse, licensed practical nurse, nurse-midwife, licensed Direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.
Vermont	**Vt. Stat. Ann. tit. 12, § 1908 (2011) Conduct of Trial: Burden of proof.** For the purpose of this section, malpractice shall mean professional medical negligence comprised of the elements listed herein. In a malpractice action based on the negligence of the personnel of a hospital, a physician licensed under chapter 23 of Title 26, a dentist licensed under chapter 13 of Title 26, a podiatrist licensed under chapter 7 of Title 26, a chiropractor licensed under chapter 9 of Title 26, a nurse licensed under chapter 27 of Title 26, or an osteopathic physician licensed under chapter 33 of Title 26.

State	Definition
Virginia	**Va. Code Ann. § 8.01-581.1 (2011) Medical Malpractice Review Panels; Arbitration Of Malpractice Claims: Definitions.** "Malpractice" means any tort action or breach of contract action for personal injuries or wrongful death, based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient. "Health care provider" means (i) a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered nurse or licensed practical nurse or a person who holds a multistate privilege to practice such nursing under the Nurse Licensure Compact, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, clinical social worker, professional counselor, licensed marriage and family therapist, licensed dental hygienist, health maintenance organization, or emergency medical care attendant or technician who provides services on a fee basis; (ii) a professional corporation, all of whose shareholders or members are so licensed; (iii) a partnership, all of whose partners are so licensed; (iv) a nursing home as defined in § 54.1-3100 except those nursing institutions conducted by and for those who rely upon treatment by spiritual means alone through prayer in accordance with a recognized church or religious denomination; (v) a professional limited liability company comprised of members as described in subdivision A 2 of § 13.1-1102; (vi) a corporation, partnership, limited liability company or any other entity, except a state-operated facility, which employs or engages a licensed health care provider and which primarily renders health care services; or (vii) a director, officer, employee, independent contractor, or agent of the persons or entities referenced herein, acting within the course and scope of his employment or engagement as related to health care or professional services.
Washington	**Wash. Rev. Code Ann. § 48.140.010 (2011) Medical Malpractice Closed Claim Reporting: Definitions.** "Medical malpractice" means an actual or alleged negligent act, error, or omission in providing or failing to provide health care services that is actionable under chapter 7.70 RCW. **Was. Rev. Code Ann. § 7.70.020 (2011) Actions For Injuries Resulting from Health Care: Definitions.** In this chapter, "health care provider" means either: (1) A person licensed by this state to provide health care or related services including, but not limited to, an East Asian medicine practitioner, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician assistant, midwife, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his or her estate or personal representative; (2) An employee or agent of a person described in part (1) above, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his or her estate or personal representative; or (3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in part (1) above, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment, including in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative.
West Virginia	**W. Va. Code Ann. § 55-7B-2 (2011) Medical Professional Liability: Definitions.** "Medical professional liability" means any liability for damages resulting from the death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility to a patient. "Health care" means any act or treatment performed or furnished, or which should have

State	Definition
	been performed or furnished, by any health care provider for, to or on behalf of a patient during the patient's medical care, treatment or confinement. "Medical injury" means injury or death to a patient arising or resulting from the rendering of or failure to render health care.
Wisconsin	**Wis. Stat. § 655.001 (2010) Health Care Liability and Injured Patients And Families Compensation: Definitions.** Chapter 655 of the Wisconsin statutes covers health care liability actions. This applies to: "Health care practitioner" means a health care professional, as defined in s. 180.1901 (1m), who is an employee of a health care provider described in s. 655.002 (1) (d), (e), (em), or (f) and who has the authority to provide health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or under the direction and supervision of a physician or nurse anesthetist. "Health care provider" means a person to whom this chapter applies under s. 655.002 (1) or a person who elects to be subject to this chapter under s. 655.002 (2).
Wyoming	**Wyo. Stat. Ann. § 1-1-130 (2011) Actions Against Health Care Providers; Admissibility of Evidence.** In any civil action or arbitration brought by an alleged victim of an unanticipated outcome of medical care against a health care provider. For purposes of this section: "Health care provider" means a person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession "Unanticipated outcome" means the result of a medical treatment or procedure that differs from an expected result. **Wyo. Stat. Ann. § 9-2-1515 (2011). Medical Review Panel: Definitions.** As used in this act: "Malpractice claim" or "claim" means any claim against a health care provider for alleged medical treatment, alleged lack of medical treatment, or other alleged departure from accepted standards of health care which results in damage to the patient.

Source: LexisNexis State Statutes database.

Notes: The statutory language included is from the current version of the state's code which may not reflect very recent legislative enactments yet to be codified. CRS did not search state regulations that may provide additional definitions.

Table A-2 summarizes state laws that impose caps on punitive damages and noneconomic damages in medical malpractice cases. Where "no statute found" is entered, this indicates that the state apparently imposes no cap in medical malpractice suits, either because the state constitution prohibits caps or because the state legislature has chosen not to enact a cap. This table quotes some, but not necessarily all, state constitutional provisions that prohibit caps.

As discussed in "Noneconomic Damages," the term "economic damages" refers to past and future monetary expenses of an injured party, such as medical bills, rehabilitation expenses, and lost wages. "Noneconomic damages" refers primarily to damages for pain and suffering. Economic and noneconomic damages are both compensatory damages; that is, they are intended to compensate the injured party. As mentioned earlier, punitive damages are awarded not to compensate plaintiffs but to punish and deter particularly egregious conduct on the part of defendants. Though noneconomic by nature, punitive damages are usually treated separately from noneconomic damages.

The dollar amount in the right-hand column refers to the cap on compensatory noneconomic damages, except that "total cap" means a cap on all damages—economic, noneconomic, and punitive damages—combined. We have attempted to note where a state's highest court has declared the cap to violate the state's constitution.

The caps listed in the chart, as well as the entry "punitive damages prohibited," do not necessarily apply to tort actions other than for medical malpractice, though in many cases they do.

Table A-2. State Caps on Noneconomic and Punitive Damages in Medical Malpractice Lawsuits

State	Noneconomic Damages	Punitive Damages
Alabama	**Ala. Code § 6-5-544 (2011)** Imposes a $400,000 cap on noneconomic losses, including punitive damages. Held unconstitutional. Moore v. Mobile Infirmary Ass'n, 592 So. 2d 156 (Ala. 1991). **Ala. Code § 6-5-547 (2011)** $1,000,000 total cap in wrongful death actions against a health care provider. This provision was held to violate state constitution. Smith v. Schulte, 671 So. 2d 1334 (Ala. 1995), cert. denied, 517 U.S. 1220 (1996).	**Ala. Code § 6-11-21 (2011)** The greater of three times compensatory damages or $500,000 ($1.5 million if physical injury), with exceptions.
Alaska	**Alaska Stat. § 09.17.010 (2011)** Imposes a $400,000 cap or the injured person's life expectancy in years multiplied by $8,000, whichever is greater, but $1,000,000 or the person's life expectancy in years multiplied by $25,000, whichever is greater, when the damages are awarded for severe permanent physical impairment or severe disfigurement.	**Alaska Stat. § 09.17.020 (2011)** The greater of three times compensatory damages or $500,000, except if defendant was motivated by financial gain and actually knew the adverse consequences, then the greatest of four times compensatory damages, four times financial gain, or $7,000,000.
Arizona	**Ariz. Const. Art. II, § 31 (2011)** No law shall be enacted in this State limiting the amount of damages to be recovered for causing the death or injury of any person.	**Ariz. Const. Art. II, § 31 (2011)** No law shall be enacted in this State limiting the amount of damages to be recovered for causing the death or injury of any person.
Arkansas	**Ark. Const. Art. 5, § 32 (2010)** No law shall be enacted limiting the amount to be recovered for injuries resulting in death or for injuries to persons or property.	**Ark. Code Ann. § 16-55-208 (2010)** The greater of $250,000 or three times compensatory damages, not to exceed $1,000,000, to be adjusted as of January 1, 2006 and at three-year intervals thereafter, in accordance with the Consumer Price Index. No cap if defendant intentionally caused injury or damage.
California	**Cal. Civ. Code § 3333.2 (2010)** $250,000.	No statute found.
Colorado	**Colo. Rev. Stat. §§ 13-21-102.5, 13-64-302 (2010)** $250,000 noneconomic cap, but $500,000 cap if court finds justification for more than $250,000. Both caps adjusted for inflation. $1,000,000 total cap in suits against health care providers.	**Colo. Rev. Stat. § 13-21-102 (2010)** The amount of actual damages awarded, but three times that amount if the defendant continues to act in a willful and wanton manner during the pendency of the case.

State	Noneconomic Damages	Punitive Damages
Connecticut	**Conn. Gen. Stat. § 52-228c (2010)** Whenever, the jury renders a verdict specifying noneconomic damages in an amount exceeding one million dollars, the court shall review the evidence presented to the jury to determine if the amount is excessive as a matter of law.	No statute found.
Delaware	No statute found.	No statute found.
District of Columbia	No statute found.	No statute found.
Florida	**Fla. Stat. Ann. § 766.118(2) (2011)** $500,000, except $1 million cap on all practitioners in the aggregate if permanent vegetative state or death, or if, because of special circumstances, noneconomic harm is particularly severe and injury was catastrophic. For non-practitioners, above caps are $750,000 and $1.5 million, respectively. For emergency services, caps are $150,000 for practitioners, $750,000 for non-practitioners, with maximum damages recoverable by all claimants $300,000 and $1.5 million, respectively.	**Fla. Stat. Ann. § 768.73(1) (2011)** The greater of three times compensatory damages or $500,000, except, if wrongful conduct was motivated solely by unreasonable financial gain, and unreasonably dangerous nature of the conduct and high likelihood of injury were known, then the greater of four times compensatory damages or $2 million. No cap where specific intent to harm plaintiff. **Fla. Stat. Ann. § 766.207(7)(d) (2011)** Punitive damages prohibited in voluntary binding arbitration.
Georgia	**Ga. Code Ann. § 51-13-1 (2011)** Health care providers or medical facility: $350,000. Medical facilities: $750,000. The aggregate amount of noneconomic damages recoverable under such subsections shall in no event exceed $1,050,000.00. This provision held unconstitutional. Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt, 691 S.E.2d 218 (Ga. 2010).	**Ga. Code Ann. § 51-12-5.1 (2011)** $250,000. If it is found that the defendant acted, or failed to act, with the specific intent to cause harm, or that the defendant acted or failed to act while under the influence of alcohol, drugs other than lawfully prescribed drugs administered in accordance with prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to that degree that his or her judgment is substantially impaired, there shall be no limitation regarding the amount which may be awarded.
Hawaii	**Haw. Rev. Stat. Ann. § 663-8.7 (2011)** $375,000 (cap does not apply to intentional torts).	No statute found.
Idaho	**Idaho Code Ann. § 6-1603 (2011)** For actions accruing after July 1, 2003, $250,000 subject to increase or decrease in accordance with the average annual wage.	**Idaho Code Ann. § 6-1604 (2011)** For actions accruing after July 1, 2003, the greater of $250,000 or three times compensatory damages.

State	Noneconomic Damages	Punitive Damages
Illinois	**735 Ill. Comp. Stat. Ann. 5/2-1706.5 (2011)** Hospital and its personnel or hospital affiliates: $1 million. Physician and the physician's business or corporate entity and personnel or health care professional: $500,000. This provision held unconstitutional. Lebron v. Gottlieb Mem. Hosp., 930 N.E.2d 895 (Ill. 2010).	**735 Ill. Comp. Stat. Ann. 5/2-1115 (2011)** Punitive damages are not recoverable in healing art and legal malpractice cases.
Indiana	**Ind. Code Ann. § 34-18-14-3 (2011)** $1,250,000., total cap. Qualified health care provider: $250,000 total cap.	**Ind. Code Ann. § 34-51-3-4 (2011)** Greater of three times compensatory damages or $50,000.
Iowa	No statute found.	No statute found.
Kansas	**Kan. Stat. Ann. § 60-19a02(b) (2009)** $250,000 by each party from all defendants.	**Kan. Stat. Ann. § 60-3702(e), (f) (2009)** The lesser of the defendant's annual gross income or $5,000,000, but if the profitability of the misconduct exceeds such amount, the cap is 1.5 times the profit.
Kentucky	**Ky. Const. § 54 (2010)** The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property.	**Ky. Const. § 54 (2010)** The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property.
Louisiana	**La. Rev. Stat. Ann. § 40:1299.42 (2011)** $500,000 total cap, exclusive of future medical care and related benefits. Qualified health care provider: $100,000 total cap per patient.	Punitive damages prohibited at common law.
Maine	**Me. Rev. Stat. tit. 18-A, § 2-804(b) (2011)** Wrongful death actions: $500,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts.	**Me. Rev. Stat. tit. 18-A, § 2-804(b) (2011)** Wrongful death actions: $250,000.

State	Noneconomic Damages	Punitive Damages
Maryland	**Md. Code Ann., Cts. & Jud. Proc. § 3-2A-09 (2011)** 1) (i) Except as provided in paragraph (2)(ii), a cause of action arising between January 1, 2005, and December 31, 2008, inclusive, may not exceed $650,000. (ii) The limitation 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. (2) (i) Except as provided in subparagraph (ii) of this paragraph, the limitation under paragraph (1) shall apply in the aggregate to all claims for personal injury and wrongful death arising from the same medical injury, regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants. (ii) If there is a wrongful death action in which there are two or more claimants or beneficiaries, whether or not there is a personal injury action arising from the same medical injury, the total amount awarded for noneconomic damages for all actions may not exceed 125% of the limitation established under paragraph (1) of this subsection, regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants. **Md. Code Ann., Cts. & Jud. Proc. § 11-108 (2011)** $500,000 if cause of action arises on or after October 1, 1994, increased by $15,000 on October 1 of each succeeding year for causes of action that arise on or after the date of the increase.	No statute found
Massachusetts	**Mass. Ann. Laws, ch. 231, § 60H (2010)** $500,000, unless death resulted or "special circumstances" are found. **Mass. Ann. Laws, ch. 231, § 85K (2010)** Charitable institution: $20,000 total cap.	**Mass. Ann. Laws, ch. 229, § 2 (2010)** In wrongful death cases, not less than $5,000 where decedent's death was caused by the malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the defendant. Punitive damages otherwise prohibited at common law.

State	Noneconomic Damages	Punitive Damages
Michigan	**Mich. Comp. Laws. Serv. § 600.1483 (2011)** $280,000, recoverable by all plaintiffs, resulting from the negligence of all defendants, but $500,000 if a serious injury enumerated in the statute occurred.	No statute found.
Minnesota	No statute found.	No statute found.
Mississippi	**Miss. Code Ann. § 11-1-60 (2010)** $500,000 cap for injury based on malpractice or breach of standard of care against a provider of health care, including institutions for aged or infirm.	**Miss. Code Ann. § 11-1-65 (2010)** $20 million if defendant's net worth exceeds $1 billion; $15 million if it exceeds $750 million but is not more than $1 billion; $10 million if it exceeds $500 million but is not more than $750 million; $7½ million if it exceeds $100 million but is not more than $500 million; $5 million if it exceeds $50 million but is not more than $100 million; 4% of defendant's net worth if defendant's net worth is $50 million or less.
Missouri	**Mo. Rev. Stat. § 538.210 (2011)** Not to exceed $350,000 irrespective of the number of defendants.	No statute found.
Montana	**Mont. Code Ann. § 25-9-411 (2010)** $250,000 cap on noneconomic damages for actions based on the same act or series of acts that allegedly caused the injury, injuries, death or deaths; or regardless the number of defendant health care providers.	**Mont. Code Ann. § 27-1-220 (2010)** $10 million or 3% of a defendant's net worth, whichever is less.
Nebraska	**Neb. Rev. Stat. Ann. § 44-2825 (2010)** Healthcare provider and the Excess Liability Fund: $1,750,000, total cap. Healthcare provider: $500,000.	Punitive damages prohibited at common law.
Nevada	**Nev. Rev. Stat. Ann. § 41A.035 (2010)** Not to exceed $350,000.	**Nev. Rev. Stat. Ann. § 42.005 (2010)** Three times compensatory damages if compensatory damages are $100,000 or more; $300,000 if the compensatory damages are less than $100,000.
New Hampshire	**N.H. Rev. Stat Ann. § 507-C:7 (2011)** Not to exceed $250,000. This provision held unconstitutional. Carson v. Maurer, 424 A.2d 825 (N.H. 1980).	**N.H. Rev. Stat Ann. § 507:16 (2011)** No punitive damages shall be awarded in any action, unless otherwise provided by statute. No statute provides for punitive damages in medical malpractice actions.
New Jersey	No statute found.	**N.J. Rev. Stat. 2A:15-5.14 (2011)** Greater of five times compensatory damages or $350,000.

State	Noneconomic Damages	Punitive Damages
New Mexico	**N.M. Stat. Ann. § 41-5-6 (2010)** $600,000 total cap. Monetary damages shall not be awarded for future medical expenses in malpractice claims.	**N.M. Stat. Ann. § 41-5-6 (2010)** Punitive damages and medical care and related benefits are not subject to the $600,000 cap.
New York	No statute found.	No statute found
North Carolina	No statute found.	**N.C. Gen. Stat. § 1D-25 (2010)** Greater of three times the amount of compensatory damages or $250,000.
North Dakota	**N.D. Cent. Code § 32-42-02 (2011)** Not to exceed $500,000 cap on noneconomic damages regardless the number of health care providers.	**N.D. Cent. Code § 32-03.2-11(4) (2011)** Greater of two times compensatory damages or $250,000.
Ohio	**Ohio Rev. Code Ann. § 2323.43 (2011)** The greater of $250,000 or three times plaintiff's economic loss, to a maximum of $350,000 for each plaintiff or a maximum of $500,000 for each occurrence. But, if specified serious injuries occur, cap is $500,000 for each plaintiff or $1 million for each occurrence.	**Ohio Rev. Code Ann. § 2315.21 (2011)** Punitive or exemplary damages in excess of two times the amount of the compensatory damages; Small employer or individual: lesser of two times the amount of the compensatory damages or 10% of the employer's or individual's net worth, up to $350,000. Except where the alleged injury, death, or loss to person or property resulted from the defendant acting with one or more of the culpable mental states described in statute.
Oklahoma	**Okla. Stat. tit., 23, § 61.2 (2010)** $400,000.00, regardless of the number of parties against whom the action is brought or the number of actions brought. No limit on noneconomic damages 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.	**Okla. Stat. tit., 23, § 9.1 (2010)** Where reckless disregard, greater of $100,000 or actual damages awarded. Where intentional and with malice, greatest of $500,000, twice actual damages awarded, or financial benefit derived by defendant. If court finds beyond a reasonable doubt that defendant engaged in conduct life-threatening to humans, then no cap.

State	Noneconomic Damages	Punitive Damages
Oregon	**Or. Rev. Stat. § 31.710 (2010)** Not to exceed $500,000. This provision held unconstitutional where damages are recoverable under common law. Lakin v. Senko Products, Inc., 987 P.2d 463 (Ore. 1999).	**Or. Rev. Stat. § 31.740 (2010)** Prohibited against specified health practitioners.
Pennsylvania	**Pa. Const. Art. 3, § 18 (2010)** The General Assembly may enact laws requiring the payment by employers, or employers and employees jointly, of reasonable compensation for injuries to employees arising in the course of their employment, and for occupational diseases of employees, whether or not such injuries or diseases result in death, and regardless of fault of employer or employee, and fixing the basis of ascertainment of such compensation and the maximum and minimum limits thereof, and providing special or general remedies for the collection thereof; but in no other cases shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property, and in case of death from such injuries, the right of action shall survive, and the General Assembly shall prescribe for whose benefit such actions shall be prosecuted. **40 Pa. Cons. Stat. § 1303.712(c)(2)(i) (2010)** Caps total liability of the Medical Professional Liability Catastrophe Loss Fund at $500,000 for each occurrence and $1,500,000 per annual aggregate.	**40 Pa. Cons. Stat. § 1303.505(d) (2010)** Except in cases alleging intentional misconduct, punitive damages against an individual physician shall not exceed 200% of the compensatory damages awarded. Punitive damages, when awarded, shall not less than $100,000 unless a lower verdict amount is returned by the trier of fact.
Rhode Island	No statute found.	No statute found.

State	Noneconomic Damages	Punitive Damages
South Carolina	**S.C. Code Ann. § 15-32-220 (2010)** A single health care provider or a single health care institution: $350,000 for each claimant, regardless of the number of separate causes of action. One health care institution, or more than one health care provider, or any combination thereof, 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. (E) The limitations for noneconomic damages rendered against any health care provider or health care institution do not apply if the jury or court determines that the defendant was 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.	**S.C. Code Ann. § 15-32-220 (2010)** This section does not limit the amount of punitive damages in cases where the plaintiff is able to prove an entitlement to an award of punitive damages as required by law.
South Dakota	**S.D. Codified Laws § 21-3-11 (2011)** The total general damages which may be awarded may not exceed the sum of five hundred thousand dollars. There is no limitation on the amount of special damages which may be awarded.	No statute found.
Tennessee	No statute found.	No statute found.

State	Noneconomic Damages	Punitive Damages
Texas	**Tex. Civ. Prac. & Rem. §§ 74.301, 302 (2010)** $250,000 per claimant against a physician or health care provider and $250,000 per claimant against a health care institution. If more than one health care institution is liable, cap against them all is $500,000 per claimant. **Tex. Civ. Prac. & Rem. § 74.303 (2010)** In a wrongful death or survival action on a health care liability claim where final judgment is rendered against a physician or health care provider, 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, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based, subject to increase or decrease in accordance with consumer price index.	**Tex. Civ. Prac. & Rem. § 41.008 (2010)** Greater of (1) two times the amount of economic damages plus the amount of noneconomic damages up to $750,000; or (2) $200,000. **Tex. Civ. Prac. & Rem. § 74.303 (2010)** In a wrongful death or survival action on a health care liability claim where final judgment is rendered against a physician or health care provider, 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, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based, subject to increase or decrease in accordance with consumer price index.
Utah	**Utah Code Ann. § 78B-3-410 (2011)** (1)(a) for a cause of action arising before July 1, 2001, $250,000; (b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the limitation is adjusted for inflation to $400,000; (c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010 the $400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as provided in Subsection (2); and (d) for a cause of action arising on or after May 15, 2010, $450,000. (2) (a) Beginning July 1, 2002 and each July 1 thereafter until July 1, 2009, the limit for damages under Subsection (1)(c) shall be adjusted for inflation by the state treasurer.	**Utah Code Ann. § 78B-3-410 (2011)** The limitations provided in this section do not apply to punitive damages.
Vermont	No statute found.	No statute found.
Virginia	**Va. Code Ann. § 8.01-581.15 (2011)** $1.5 million total cap, to increase by $50,000 every July 1 from 2000 through 2006, and by $75,000 on July 1, 2007 and 2008. The July 1, 2008, increase shall be the final annual increase.	**Va. Code Ann. § 8.01-38.1 (2011)** Not to exceed $350,000 cap.

State	Noneconomic Damages	Punitive Damages
Washington	**Wash. Rev. Code Ann. § 4.56.250 (2011)** Amount determined by multiplying 0.43 by the average annual wage and by the life expectancy of the person incurring noneconomic damages, as the life expectancy is determined by the life expectancy tables adopted by the insurance commissioner. This provision held unconstitutional. Sofie v. Fibreboard Corp., 771 P.2d 711 (Wash. 1989).	Punitive damages prohibited at common law.
West Virginia	**W. Va. Code Ann. § 55-7B-8 (2011)** $250,000 per occurrence, regardless of the number of plaintiffs or defendants, except cap is $500,000 if (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. Annual increases based on Consumer Price Index. Caps apply only if defendant has insurance of at least $1 million per occurrence.	No statute found.
Wisconsin	**Wis. Stat. §§ 655.017, 893.55(4)(d)(1) (2010)** $750,000 for each occurrence under on or after April 6, 2006. A $350,000 cap was held unconstitutional in Ferdon ex rel. Petrucelli v. Wisconsin Patients Compensation Fund, 701 N.W.2d 440 (2005).	**Wis. Stat. § 895.043(6) (2011)- 2011 Wis. Act 2, enacted on 1/27/2011** Not to exceed twice the amount of any compensatory damages recovered by the plaintiff or $ 200,000, whichever is greater.
Wyoming	**Wyo. Const. Art. 10, § 4 (2011)** No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person.	**Wyo. Const. Art. 10, § 4 (2011)** No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person.

Source: LexisNexis State Statutes database.

Notes: The statutory language included is from the current version of the state's code which may not reflect very recent legislative enactments yet to be codified.

Table A-3 sets forth the burden of proof and standards for awards of punitive damages in medical malpractice suits in the 50 states, as well as whether the state requires or permits a separate hearing to determine punitive damages. The burden of proof refers to the plaintiff's duty to present evidence to prove his case. Although the lowest burden, which usually applies in civil cases, is "preponderance of the evidence," many states impose a higher burden of proof to recover punitive damages—proof by "clear and convincing evidence." One state—Colorado—however, requires proof "beyond a reasonable doubt," which is the highest standard—usually the burden that the government must meet in criminal prosecutions.[54]

Standards for awards of punitive damages refer to what the plaintiff must prove to receive an award of punitive damages. To recover compensatory damages in a medical malpractice case, the plaintiff typically must prove negligence. To recover punitive damages, the plaintiff must prove that the defendant's conduct was more egregious than negligence, and usually more egregious than gross negligence.

Separate proceedings for punitive damages refer to whether the computation and award of punitive damages occurs during the initial trial or in a subsequent trial. Such punitive damages proceedings usually include the same jury as in the original trial, but additional discovery can occur and additional evidence can be presented (such as evidence related to the financial condition of the defendant). This report sets forth the specific availability of this bifurcated trial process, noting whether the process is available on the motion of one of the parties, or is mandatory in all proceedings resulting in the award of punitive damages. Where "N/A" is entered does not mean that bifurcation of a punitive damages claim is prohibited or non-existent. Rather, it means that the state (1) may not have a specific statute that addresses bifurcation with respect to punitive damages, or (2) that the its civil procedure rules grants the courts the discretion to have a separate trial on any claim if it would be conducive to expedition or economy. For example, Rule 42 of West Virginia Civil Procedure states that the court may have separate trials on any claim if it would be conducive or expeditious to do so.

Most of the provisions listed in the chart apply to punitive damages not only in medical malpractice cases, but in other tort cases as well. Where "punitive damages prohibited" appears, the prohibition may be limited to medical malpractice cases, or it may apply to other tort cases as well.

[54] Colo. Rev. Stat. § 13-25-127 (2010).

Table A-3. Punitive Damages—Burden of Proof, Standard, and Separate Proceeding

State and Citation	Burden of Proof	Standard	Separate Proceeding
Alabama	**Ala. Code § 6-11-20 (2011)** Clear and convincing evidence.	**Ala. Code § 6-11-20 (2011)** "[T]he defendant consciously or deliberately engaged in oppression, fraud, wantonness, or malice."	**Ala. Code § 6-11-23 (2011)** Available.
Alaska	**Alaska Stat. § 09.17.020 (2011)** Clear and convincing evidence.	**Alaska Stat. § 09.17.020 (2011)** "[D]efendant's conduct (1) was outrageous, including acts done with malice or bad motives; or (2) evidenced reckless indifference to the interest of another person."	**Alaska Stat. § 09.17.020 (2011)** Mandatory.
Arizona	Clear and convincing evidence. *Linthicum v. Nationwide Life Ins. Co.*, 723 P.2d 675, 681 (1986).	Defendant engaged in "reprehensible conduct" and acted "with an evil mind." *Linthicum v. Nationwide Life Ins. Co.*, 723 P.2d 675, 680 (1986).	N/A.
Arkansas	**Ark. Code Ann. § 16-55-207 (2010)** Clear and convincing evidence.	**Ark. Code Ann. § 16-55-206 (2010)** "[D]efendant knew or ought to have known ... that his or her conduct would naturally and probably result in injury or damage and that he or she continued the conduct with malice or in reckless disregard of the consequences ..." or "defendant intentionally pursued a course of conduct for the purpose of causing injury or damages."	**Ark. Code Ann. § 16-55-211 (2010)** Available.
California	**Cal. Civ. Code § 3294 (2010)** Clear and convincing evidence.	**Cal. Civ. Code § 3294 (2010)** "[O]ppression, fraud, or malice."	N/A.
Colorado	**Colo. Rev. Stat. §13-25-127(2) (2010)** Beyond a reasonable doubt.	**Colo. Rev. Stat. § 13-21-102 (2010)** "[F]raud, malice, or willful and wanton conduct."	N/A.
Connecticut	Preponderance of the evidence. *Freeman v. Alamo Management Co.*, 607 A.2d 370, 373 (Conn. 1992).	"{A] reckless indifference to the rights of others or an intentional and wanton violation of those rights." *Sorrentino v. All Seasons Servs.*, 717 A.2d 150, 161 (Conn. 1998).	N/A.

State and Citation	Burden of Proof	Standard	Separate Proceeding
Delaware	Undefined, but likely preponderance of the evidence.	**Del. Code Ann. tit. 18, § 6855 (2011)** "[I]njury complained of was maliciously intended or was the result of wilful or wanton misconduct by the health care provider."	N/A.
District of Columbia	Clear and convincing evidence. *Croley v. Republican Nat'l Comm*., 759 A.2d 682, 695 (D.C. 2000).	"[E]gregious conduct." *Railan v. Katyal*, 766 A.2d 998, 1012 (D.C. 2001). "[M]alice or its equivalent." *Croley v. Republican Nat'l Comm*., 759 A.2d 682, 695 (D.C. 2000).	N/A.
Florida	**Fla. Stat. Ann. § 768.72(2) (2011)** Clear and convincing evidence.	**Fla. Stat. Ann. § 768.72(2)(2011)** "[I]ntentional misconduct or gross negligence."	N/A.
Georgia	**Ga. Code Ann. § 51-12-5.1(b) (2011)** Clear and convincing evidence.	**Ga. Code Ann. § 51-12-5.1(b) (2011)** "[W]illful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences."	**Ga. Code Ann. § 51-12-5.1(d)(2) (2011)** Mandatory.
Hawaii	Clear and convincing evidence. *Amfac, Inc. v. Waikiki Beachcomber Inv. Co.*, 839 P.2d 10, 37 (1992)	"[D]efendant has acted wantonly or oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations, or where there has been some wilful misconduct or that entire want of care which would raise the presumption of conscious indifference to the consequences." *Amfac, Inc. v. Waikiki Beachcomber Inv. Co.*, 839 P.2d 10, 37 (1992)	N/A.
Idaho	**Idaho Code Ann. § 6-1604 (2011)** Clear and convincing evidence.	**Idaho Code Ann. § 6-1604(2011)** "[O]ppressive, fraudulent, malicious or outrageous conduct."	N/A.

State and Citation	Burden of Proof	Standard	Separate Proceeding
Illinois	**735 Ill. Comp. Stat. Ann. 5/2-1115 (2011)** Punitive damages prohibited in medical malpractice cases.		
Indiana	**Ind. Code Ann. § 34-51-3-2 (2011)** Clear and convincing evidence.	"[A]ct[ing] with malice, fraud, gross negligence, or oppressiveness which was not the result of a mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing." *USA Life One Ins. Co. of Indiana v. Nuckolls*, 682 N.E.2d 534, 541 (Ind. 1997).	N/A.
Iowa	**Iowa Code Ann. § 668A.1 (2010)** "[P]reponderance of clear, convincing, and satisfactory evidence."	**Iowa Code Ann. § 668A.1 (2010)** "[W]illful and wanton disregard for the rights or safety of another."	N/A.
Kansas	**Kan. Stat. Ann. § 60-3701 (2009)** Clear and convincing evidence.	**Kan. Stat. Ann. § 60-3701 (2009)** "[W]illful conduct, wanton conduct, fraud or malice."	**Kan. Stat. Ann. § 60-3701 (2009)** Mandatory.
Kentucky	**Ky. Rev. Stat. Ann. § 411.184 (2010**) Clear and convincing evidence.	**Ky. Rev. Stat. Ann. § 411.184 (2010)** "[O]ppression, fraud or malice."	N/A.
Louisiana	Punitive damages unavailable in medical malpractice claims. *See Naquin v. Fluor Daniel Services Corp.*, 935 F. Supp. 847, 849) (E.D. La. 1996) (noting that punitive damages are only available under Louisiana law if specifically permitted by a statute).		

State and Citation	Burden of Proof	Standard	Separate Proceeding
Maine	Clear and convincing evidence. *St. Francis de Sales Federal Credit Union v. Sun Insurance Company of New York*, 818 A.2d 995, 1001 (Me. 2002, revised 2003).	Malice, either express (where the defendant "is motivated by ill will toward the plaintiff"), or implied (defendant's conduct "is so outrageous that malice toward a person injured as a result of that conduct can be implied.") Implied malice is not established "by the defendant's mere reckless disregard of the circumstances." *St. Francis de Sales Federal Credit Union v. Sun Insurance Company of New York*, 818 A.2d 995, 1001 (Me. 2002, revised 2003).	N/A
Maryland	Clear and convincing evidence. *Owens-Illinois, Inc. v. Zenobia*, 601 A.2d 633, 657 (Md. 1992).	"[E]vil motive, intent to injure, ill will, or fraud." *Owens-Illinois, Inc. v. Zenobia*, 601 A.2d 633, 652 (Md. 1992).	N/A.
Massachusetts	**Mass. Ann. Laws, ch. 229, § 2 (2010)** Preponderance of the evidence in wrongful death cases. But, punitive damages for medical malpractice otherwise prohibited.	**Mass. Ann. Laws, ch. 229, § 2 (2010)** In wrongful death cases, "malicious, willful, wanton or reckless conduct ... or gross negligence." But, punitive damages for medical malpractice otherwise prohibited.	N/A.
Michigan	Undefined, but likely preponderance of the evidence.	Conduct that "inspires feelings of humiliation, outrage and indignity" and is "malicious or so willful and wanton as to demonstrate a reckless disregard of plaintiff's rights." *Veselenak v. Smith*, 327 N.W.2d 261, 264 (1982).	N/A.
Minnesota	**Minn. Stat. Ann. § 549.20 (2010)** Clear and convincing evidence.	**Minn. Stat. Ann. § 549.20 (2010)** "[D]eliberate disregard for the rights or safety of others."	**Minn. Stat. Ann. § 549.20 (2010)** Mandatory.

State and Citation	Burden of Proof	Standard	Separate Proceeding
Mississippi	**Miss. Code Ann. § 11-1-65(1)(a)(2010)** Clear and convincing evidence.	**Miss. Code Ann. § 11-1-65(1)(a)(2010)** "[A]ctual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, or committed actual fraud."	**Miss. Code Ann. § 11-1-65(1)(e)(2010)** Mandatory.
Missouri	Clear and convincing evidence. *Rodriguez v. Suzuki Motor Corp*., 936 S.W.2d 104, 111 (Mo. 1996).	**Mo. Rev. Stat. § 538.210.5 (2011)** For medical malpractice actions, "willful, wanton, or malicious misconduct." § 538.210.5 (2010).	**Mo. Rev. Stat. § 510.263 (2011)** Available.
Montana	**Mont. Code Ann. § 27-1-221 (2010)** Clear and convincing evidence.	**Mont. Code Ann. § 27-1-221 (2010)** "[A]ctual fraud or actual malice."	**Mont. Code Ann. § 27-1-221 (2010)** Mandatory.
Nebraska	Punitive damages prohibited. *Miller v. Kingsley*, 230 N.W.2d 472, 474 (Neb. 1975).		
Nevada	**Nev. Rev. Stat. Ann. § 42.005 (2010)** Clear and convincing evidence.	**Nev. Rev. Stat. Ann. § 42.005 (2010)** "[O]ppression, fraud or malice, express or implied."	**Nev. Rev. Stat. Ann. § 42.005 (2010)** Mandatory.
New Hampshire	**N.H. Rev. Stat. Ann. § 507:16 (2011)** Punitive damages prohibited.		
New Jersey	**N.J. Rev. Stat. § 2A:15-5.12 (2011)** Clear and convincing evidence.	**N.J. Rev. Stat. § 2A:15-5.12 (2011)** "[A]ctuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed."	N/A.
New Mexico	Preponderance of the evidence. *United Nuclear Corp. v. Allendale Mut. Ins. Co*., 709 P.2d 649, 654 (N.M. 1985).	"[M]alicious, fraudulent, oppressive, or committed recklessly with a wanton disregard for the plaintiff's rights." *Albuquerque Concrete Coring Co., Inc. v. Pan Am World Services, Inc.*, 879 P.2d 772, 775 (1994).	N/A.

State and Citation	Burden of Proof	Standard	Separate Proceeding
New York	Undefined, but likely preponderance of the evidence.	"[I]ntentional or deliberate wrongdoing, aggravating or outrageous circumstances, fraudulent or evil motive, or conscious act in willful and wanton disregard of another's rights" *Pearlman v. Friedman, Alpern & Green, LLP*, 750 N.Y.S.2d 869 (2002).	Recommended. *Rupert v. Sellers*, 368 N.Y.S.2d 904, 912 (N.Y. App. Div. 1975)
North Carolina	**N.C. Gen. Stat. § 1D-15 (2010)** Clear and convincing evidence.	**N.C. Gen. Stat. § 1D-15 (2010)** "(1) Fraud. (2) Malice. (3) Willful or wanton conduct."	**N.C. Gen. Stat. § 1D-30 (2010)** Available.
North Dakota	**N.D. Cent. Code § 32-03.2-11 (2011)** Clear and convincing evidence.	**N.D. Cent. Code § 32-03.2-11 (2011)** "[O]ppression, fraud, or actual malice."	**N.D. Cent. Code § 32-03.2-11 (2011)** Available.
Ohio	**Ohio Rev. Code Ann. § 2315.21 (2011)** Clear and convincing evidence.	**Ohio Rev. Code Ann. § 2315.21 (2011)** "[M]alice or aggravated or egregious fraud."	Mandatory. **Ohio Rev. Code Ann. § 2315.21 (2011)**, *overruled by Havel v. Villa St. Joseph*, No. 94677, (Ohio Ct. App. Oct. 28, 2010).
Oklahoma	**Okla. Stat. tit., 23, § 9.1 (2010)** Clear and convincing evidence.	**Okla. Stat. tit., 23, § 9.1 (2010)** Lower cap on punitive damages for "reckless disregard," but a higher cap for "intentionally and with malice toward others."	N/A.
Oregon	**Or. Rev. Stat. § 31.730 (2010)** Clear and convincing evidence.	**Or. Rev. Stat. § 31.740 (2010)** "Malice" for medical malpractice cases.	N/A.
Pennsylvania	Preponderance of the evidence. *DiSalle v. P.G. Pub. Co.*, 544 A.2d 1345, 1371 n. 24 (Pa. Super. Ct. 1988) (*citing Martin v. Johns-Manville Corp.*, 494 A.2d 1088, 1098 (Pa. 1985)).	**40 Pa. Const. Stat. § 1303.505 (2010)** "[W]illful or wanton conduct or reckless indifference to the rights of others."	N/A.
Rhode Island	Preponderance of the evidence	"[E]vidence of such willfulness, recklessness, or wickedness, ... as amounts to criminality." *Palmisano v. Toth*, 624 A.2d, 314 (1993).	N/A

State and Citation	Burden of Proof	Standard	Separate Proceeding
South Carolina	**S.C. Code Ann. § 15-33-135 (2010)** Clear and convincing evidence.	"[W]illful, wanton, or in reckless disregard of the plaintiff's rights." *Mellen v. Lane*, 377 S.C. 261 (2008).	N/A
South Dakota	**S.D. Codified Laws § 21-1-4.1 (2011)** Before one can submit a claim for punitive damages, "the court shall find, after a hearing based upon clear and convincing evidence, that there is reasonable basis to believe that there has been willful, wanton, or malicious conduct on the part of the party claimed against."	**S.D. Codified Laws § 21-3-2 (2011)** Preponderance of the evidence "[W]here defendant has been guilty of oppression, fraud, or malice, actual or presumed." *See also Flockhart v. Wyant*, 467 N.W.2d 473 (1991) (upheld trial court decision to instruct jury to decide an award of punitive damages based on the preponderance of the evidence standard).	N/A.
Tennessee	Clear and convincing evidence. *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896 (Tenn. 1992).	"[I]ntentional, fraudulent, malicious, or reckless conduct." *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896 (Tenn. 1992)	Available. *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896 (Tenn. 1992) ("[T]he court, upon motion of the defendant , shall bifurcate the trial.").
Texas	**Tex. Civ. Prac. & Rem. § 41.003 (2010)** Clear and convincing evidence.	**Tex. Civ. Prac. & Rem. § 41.003 (2010)** "[D]amages result from: (1) fraud; (2) malice; or (3) wilful act or omission or gross neglect in wrongful death actions."	**Tex. Civ. Prac. & Rem. § 41.009 (2010)** Available.
Utah	**Utah Code Ann. § 78B-8-201 (2011).** Clear and convincing evidence.	**Utah Code Ann. § 78B-8-201 (2011).** "[W]illful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and a disregard of, the rights of others."	N/A.
Vermont	Undefined but likely preponderance of the evidence. *McCormick v. McCormick*, 621 A.2d 238 (Vt. 1993).	"[C]onduct manifesting personal ill will, evidencing insult or oppression, or showing a reckless or wanton disregard of [a party's] rights." *McCormick v. McCormick*, 621 A.2d 238 (Vt. 1993).	N/A.

State and Citation	Burden of Proof	Standard	Separate Proceeding
Virginia	Undefined but likely preponderance of the evidence. *Woods v. Mendez*, 574 S.E.2d 263 (2003).	"[D]efendant's conduct was willful or wanton. Willful and wanton negligence is action undertaken in conscious disregard of another's rights or with reckless indifference to consequences with the defendant aware, from his knowledge of existing circumstances and conditions, that his conduct probably would cause injury to another." *Woods v. Mendez*, 574 S.E.2d 263 (2003).	N/A.
Washington	Punitive damages not allowed unless authorized by state legislature. *Barr v. Interbay Citizens Bank*, 635 P.2d 441 (1981).		
West Virginia	Undefined, but likely preponderance of the evidence. *TXO Prod. Corp. v. Alliance Resources Corp.*, 419 S.E.2d 870 (1992).	"[N]ot only mean-spirited conduct, but also extremely negligent conduct that is likely to cause serious harm" *TXO Prod. Corp. v. Alliance Resources Corp.*, 419 S.E.2d 870 (1992). *See also Mayer v. Frobe*, 22 S.E. 58 (1895) ("[D]efendant has acted wantonly or oppressively, or with such malice as implies a spirit of mischief or criminal indifference to civil obligations.").	N/A.
Wisconsin	Unclear after re-codification of punitive damages statute, but likely clear and convincing evidence. *See City of W. Allis v. Wisc. Elec. Power Co.*, 635 N.W.2d 873 (Wisc. App. 2001) ("Before the question of punitive damages can be submitted to a jury, the circuit court must determine ... that to a reasonable certainty the conduct was 'outrageous.' ... The evidence must also be 'clear and convincing.'").	**Wis. Stat. § 895.043(3) (2010)** "The plaintiff may receive punitive damages if evidence is submitted showing that the defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff." *See also Groshek v. Trewin,* 784 N.W.2d 163 (2010).	N/A.

State and Citation	Burden of Proof	Standard	Separate Proceeding
Wyoming	Preponderance of the evidence.	"Outrageous conduct, malice, and willful and wanton misconduct" *Alexander v. Meduna*, 47 P.3d 206 (Wyo. 2002).	N/A.

Source: LexisNexis State Statutes database.

Notes: The statutory language included is from the current version of the state's code which may not reflect very recent legislative enactments yet to be codified.

Table A-4 sets forth the doctrine of joint and several liability and provisions for periodic payment for damages in the 50 states.

As discussed in "Limiting Joint and Several Liability," the doctrine of joint and several liability is the common-law rule that, if more than one defendant is found liable for a plaintiff's injuries, then each defendant may be held 100% liable. Any defendant who pays for more than its share of the damages is entitled to seek contribution from other liable defendants. In this 50-state survey of joint and several liability, we note whether the doctrine of joint and several liability applies in the state, whether there is some modified version, or whether the doctrine has been abolished and only several liability applies, making each defendant liable only for its share of responsibility for the plaintiff's injury.

How one characterizes a statute as modified joint and several liability or several liability will vary. In this table, we use the term "modified joint and several liability" to refer to instances where the statute tends to find defendants jointly and severally liable for certain types of damages but not others. For example, in Hawaii joint and several liability applies when recovering economic damages, but several liability applies when recovering noneconomic damages if a defendant's negligence is found to be more than 25% or more of the total fault.[55] We use the term "modified joint and several liability" where joint and several liability is triggered once a defendant is found to be negligent by a certain percentage of fault or where joint, or where joint and several liability applies to recover certain damages but not others. For example, in Iowa the rule of joint and several liability does not apply to a defendant who is found to bear less than 50% of the total fault assigned to all parties, but the doctrine will apply where a defendant is found to bear more than 50% and only in the recovery for economic damages.[56] The term "several liability" is used where statutes generally abolished joint and several liability, though in some instances joint and several liability still applies where the tort-feasors acted in concert or with intent to commit the tort. For example, in Idaho the doctrine of joint and several liability is abolished except where joint tort-feasors acted in concert or when a person was acting as an agent or servant of another party.[57]

As discussed in "Periodic Payment of Damages," damages are traditionally paid in lump sum, even if they are for future medical care of future lost wages. With respect to malpractice actions, some states mandate that courts, upon the request of a party, enter a judgment for periodic payment of future damages that exceed a certain amount. Most states have general provisions that govern structured settlements, which usually includes an award for damages in a tort suit. For example, Massachusetts ch. 231C, §§1 *et seq.* governs structured settlement contracts generally; in Hawaii, the Hawaii Revised Statutes §§ 676-1 *et seq.* is the state's Structured Settlement Protection Act; and in New Jersey, N.J. Stat. Ann. §§ 2A:16-63 *et seq.* governs structured settlements. These types of general structured settlement statutes are not captured in this table. Where "no statute found" is entered means that CRS could not locate a statute specific to medical malpractice actions on periodic payment.

[55] Haw. Rev. Stat. Ann. § 663-10.9 (2011).

[56] Iowa Code Ann. § 668.4 (2010).

[57] Idaho Code Ann. § 6-803 (2010).

Table A-4. State Provisions on Joint and Several Liability and Periodic Payment of Damages

State	Joint and Several Liability	Periodic Payment of Damages
Alabama	Joint and several liability. Where the actions of two or more tort-feasors combine to produce an indivisible injury, each tort-feasor's act is considered to be proximate cause of the injury, and each tort-feasor is jointly and severally liable for the entire injury and judgment. *See General Motors Corp., v. Edwards*, 482 So.2d 1176 (Ala. 1985).	**Ala. Code § 6-5-543 (2011)** If the future damages assessed, is greater than $150,000, the court shall require payment of future damages by periodic payments. Held unconstitutional. *Lloyd Noland Hosp. v. Durham*, 906 So.2d 157 (Ala. 2005).
Alaska	**Alaska Stat. § 9.17.080 (2011)** Several liability. The court shall enter judgment against each party on the basis of several liability in accordance with that party's percentage of fault.	**Alaska Stat. § 9.55.548(a) (2011)** The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by lump-sum payment . **Alaska Stat. § 9.17.040 (2011)** At the request of an injured party, the court shall enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasibly by periodic payments rather than lump-sum payment.
Arizona	**Ariz. Rev. Stat. § 12-2506 (2011)** Several liability. The liability of each defendant for damages is several only and is not joint, except as for otherwise provided.	**Ariz. Rev. Stat. § 12-581 *et seq* (2011)** Any party may elect to receive or pay future damages for economic loss in periodic installments. Held unconstitutional. *Smith v. Meyers*, 887 P.2d 541 (Ariz. 1994).
Arkansas	**Ark. Code Ann. § 16-55-201 (2010)** Several liability. In action for personal injury, medical injury, the liability of each defendant for compensatory and punitive damages shall be several only and shall not be joint.	**Ark. Code Ann. § 16-114-208 (2010)** If the future damages assessed is greater than $100,000, the court, at the request of either party, shall order the payment to be paid in whole or in part by periodic payments.
California	**Cal. Civ. Code § 1431.2 (2010)** Modified joint and several liability. The liability of each defendant for noneconomic damages shall be several only and not joint. Each defendant shall be liable in direct proportion to that defendant's percentage of fault.	**Cal. Civ. Code § 667.7 (2010)** If the future damages assessed is greater than $50,000, a superior court, at the request of either party, shall enter a judgment ordering the payment to be paid in whole or in part by periodic payments.

State	Joint and Several Liability	Periodic Payment of Damages
Colorado	**Colo. Rev. Stat. § 13-21-111.5 (2010)** Modified joint and several liability. No defendant shall be liable for an amount greater than that represented by the degree or percentage of the negligence or fault attributable to such defendant that produced the claimed injury, death, damage, or loss, except where two or more defendants consciously conspire and deliberately pursue a common plan or design to commit a tortious act.	**Colo. Rev. Stat. § 13-64-203 (2010)** If the award for future damages is greater than $150,000, the trial judge shall enter a judgment ordering payment by periodic payments. If the award for future damages is less than $150,000, the trial judge may order that such awards be paid by periodic payments.
Connecticut	**Conn. Gen. Stat. § 52-572h (2010)** Modified joint and several liability. Each party against whom recovery is allowed shall be liable to the claimant only for such party's proportionate share of the recoverable damages, with exception.	**Conn. Gen. Stat. § 52-225d (2010)** If the amount of economic damages exceeds $200,000, the court must afford the parties 60 days to negotiate to agree to a periodic payment of damages.
Delaware	**Del. Code Ann. tit. 10, § 6301 (2011)** Joint and several liability.	**Del. Code Ann. tit 18, § 6864 (2011)** The court may fix payment of damages in periodic installments.
District of Columbia	No statute found.	No statute found.
Florida	**Fla. Stat. Ann. § 768.81 (2011)** Several liability. The court shall enter judgment against each party on the basis of such party's percentage of fault and not on the basis of joint and several liability.	**Fla. Stat. Ann. § 768.78 (2011)** If an award of future economic losses exceeds $250,000, the court shall, at the request of either party, enter a judgment ordering payment in whole or in part by periodic payments.
Georgia	**Ga. Code Ann. § 51-12-33 (2011)** Several liability. For claims after February 2005, damages apportioned shall be for liability of each person against each person whom they area awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution.	**Ga. Code Ann. § 51-13-1(f) (2011)** If an award for future damages is greater than $350,000, the trial court shall, upon the request of either party, issue an order providing that such damages be paid in periodic payments.
Hawaii	**Haw. Rev. Stat. Ann. § 663-10.9 (2011)** Modified joint and several liability. For economic damages, joint and several liability applies in actions involving injury or death. For noneconomic damages, Joint and several liability for applies where joint tort-feasor's negligence is found to be 25% or more, in actions involving injury or death.	No statute found.

State	Joint and Several Liability	Periodic Payment of Damages
Idaho	**Idaho Code Ann. § 6-803 (2011)** Several liability. Doctrine of joint and several liability generally abolished except where joint tort-feasors are acting in concert or when a person was acting as an agent or servant of another party.	**Idaho Code Ann. § 6-1602 (2011)** If the award for future damages exceeds $100,000, the court, at the request of either party, may enter a judgment providing for the periodic payment of such damages.
Illinois	**735 Ill. Comp. Stat. Ann. 5/2-1118 (2011)** Joint and several liability. Defendants in any medical malpractice action based upon negligence are jointly and severally liable for all damages.	**735 Ill. Comp. Stat. Ann. 5/2-1705 (2011)** A party may seek periodic payment of future damages if the amount is in excess of $250,000 and it can show certain requirements.
Indiana	**Ind. Code Ann. § 34-51-2-1 (2011)** Doctrine of joint and several liability seems to apply to medical malpractice actions, as these are not covered by the statute on comparative fault.	**Ind. Code Ann. §§ 34-18-14-1 *et seq*; 34-18-15-1 *et seq* (2011)** Sections provide for method of periodic payment in exchange for discharge from liability.
Iowa	**Iowa Code Ann. § 668.4 (2010)** Modified joint and several liability. The rule of joint and several liability shall not apply to defendants who are found to bear less than 50% of the total fault assigned to all parties. A defendant found to bear more than 50% shall only be jointly and severally liable for economic damages and not for any noneconomic damages.	No statute found.
Kansas	**Kan. Stat. Ann. § 60-258a (2009)** Several liability. The concept of joint and several liability no longer applies in comparative negligence actions. The individual liability of each defendant for payment of damages is to be based on proportionate fault, and contribution among joint judgment debtors is no longer to be required in such cases. *See Brown v. Kelli*, 580 P.2d 867 (Kan. 1978).	**Kan. Stat. Ann. § 60-2609 (2009)** The court may include in its judgment a requirement that damages awarded be paid in whole or in part by installment or periodic payment.

State	Joint and Several Liability	Periodic Payment of Damages
Kentucky	**Ky. Rev. Stat. Ann. § 304.40-290 (2010)** Several liability. In action for medical malpractice, the jury shall be instructed that it may apportion damages in different percentages against the defendants or it may return a verdict of joint and several liability against two or more defendants. Generally joint and several liability abolished. Ky. Rev. Stat. Ann. § 411.182; *See Radcliff Homes Inc. v. Jackson*, 766 S.W.2d 63 (Ky. Ct. App. 1989).	No statute found.
Louisiana	**La. Civ. Code Ann. art. 2324 (2011)** Several liability. A joint tort-feasor shall not be liable for more than his degree of fault and shall not be solidarily liable with any other person for damages attributable to the fault of such other person.	**La. Rev. Stat. Ann. § 40:1299.43 (2011)** If the patient is in need of future medical care, the amount of future medical care that will be incurred after a certain date will be paid, as incurred, from the patient's compensation fund.
Maine	**Me. Rev. Stat. Ann. tit. 14, § 156 (2011)** Joint and several liability. Each defendant is jointly and severally liable. However, any defendant has the right to request of the jury the percentage of fault contributed by each defendant. The defendant may be released by the plaintiff under which the plaintiff is precluded from collecting against the remaining parties that portion of the damages attributable to the released defendant.	**Me. Rev. Stat. Ann. tit. 24, § 2451 (2011)** If an award for future damages exceeds $250,000, the court, at the request of either party, enter a judgment ordering for periodic payment of future damages.
Maryland	**Md. Code Ann., Cts. & Jud. Proc. § 3-1403 (2011)** Joint and several liability. The recovery of a judgment against one joint does not discharge the other joint tort-feasor.	**Md. Code Ann., Cts. & Jud. Proc. § 11-109 (2011)** The court may order that all or part of future economic damages be paid in periodic installments consistent with the need of the plaintiff.
Massachusetts	**Mass. Ann. Laws, ch. 231B, § 1 (2010)** Joint and several liability. Language of this section providing that when two or more persons become jointly and severally liable in tort for the same injury to person, there shall be a right of contribution among them that requires that potential contributor be directly liable to plaintiff. *See Liberty Mut. Ins. Co. v. Westerlind*, 373 N.E.2d 957 (Mass. 1978).	No statute found.

State	Joint and Several Liability	Periodic Payment of Damages
Michigan	**Mich. Comp. Laws. Serv. § 600.6304(5) (2011)** Modified joint and several liability. If the plaintiff is determined to have no fault in an action for medical malpractice, the liability of each defendant is joint and several. If the plaintiff is determined to have a percentage of fault, the court shall determine whether all or a part of a party's share of the obligations is uncollectible from that party, and shall reallocate any uncollectible amount among the other parties. The party whose liability is reallocated continues to be subject to contribution and to any continuing liability to the plaintiff on judgment.	**Mich. Comp. Laws. Serv. §§ 600.6307, 600.6309 (2011)** If a judgment of future damages exceeds $250,000, the court shall enter an order that the defendant shall satisfy the amount of the judgment by the purchase of an annuity contract. If the plaintiff and defendant agree to a plan for the structured payment of future damages within 35 days of the judgment, the court shall order that payments be made pursuant to that plan.
Minnesota	**Minn. Stat. Ann. § 604.02 (2010)** Modified joint and several liability. When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except the following people shall be jointly and severally liable for the whole award: a person whose fault is greater than 50%; two or more persons who act in a common scheme or plan that result in injury.	**Minn. Stat. Ann. § 549.25 (2010)** If a claimant is awarded future damages in excess of $100,000, the court shall hold a hearing to allow claimant to determine if payment over time would be in best interest of claimant. Claimant may inform court that he does not wish to enter a structured settlement.
Mississippi	**Miss. Code Ann. § 85-5-7 (2010)** Several liability. The liability for two or more defendants shall be several only, and not joint and several, and a joint tort-feasor shall be liable only for the amount of damages allocated to him in direct proportion to his percentage of fault.	No statute found.
Missouri	**Mo. Rev. Stat. § 537.067 (2011)** Modified joint and several liability. If a defendant is found to bear 51% or more of the fault, defendant shall be jointly and severally liable for the amount of damages rendered against the other defendants. If a defendant is found to bear less than 51% of the fault, then defendant shall be responsible only for his percentage of fault.	**Mo. Rev. Stat. § 538.220 (2011)** Past damages are payable in a lump sum. But if the total award of damages exceeds $100,000, the court, upon the request of any party, shall include in the judgment a requirement that future damages be paid in whole or in part in periodic installments.

State	Joint and Several Liability	Periodic Payment of Damages
Montana	**Mont. Code Ann. §§ 27-1-703; 27-1-705 (2010)** Modified joint and several liability. In an action brought as a result of death or injury to a person, the liability of a defendant is several only and not joint A party's whose negligence is determined to be 50% or less of the combined negligence is severally liable unless acting in concert or as an agent of another. The remaining parties are jointly and severally liable for the total less the percentage attributable to claimant and to any person with whom the claimant has already settled or released from liability.	**Mont. Code Ann. § 25-9-412 (2010)** If an award of $50,000 or more is made in an action for medical malpractice, a party may request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payment rather than lump sum payment.
Nebraska	**Neb. Rev. Stat. Ann. § 25-21,185.10 (2010)** Modified joint and several liability. Except when part of a common enterprise or plan, the liability for each defendant for economic damages shall be joint and several and the liability for each defendant for noneconomic damages shall be several only and not joint.	No statute found.
Nevada	**Nev. Rev. Stat. Ann. § 41A.045 (2010)** Several liability. In an action against a health care provider based upon professional negligence, each defendant is liable to the plaintiff for economic and noneconomic damages severally only and not jointly, for their percentage of fault.	**Nev. Rev. Stat. Ann. § 42.021 (2010)** If an award for future damages exceeds $50,000, a court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages be paid in whole or in part by periodic payments rather than a lump sum payment.
New Hampshire	**N.H. Rev. Stat Ann. § 507:7-e (2011)** Modified joint and several liability. Damages shall be awarded to each defendant in accordance with proportion of fault, and each party shall be jointly and severally liable, except if any party shall be less than 50% at fault, then that party's liability shall be several and not joint.	No statute found.

State	Joint and Several Liability	Periodic Payment of Damages
New Jersey	**N.J. Rev. Stat. § 2A:15-5.3 (2011)** Modified joint and several liability. If a defendant is determined to be 60% or more responsible for the total damages, the claimant may recover the full amount of damages from such party. If a defendant is determined to be less than 60% responsible, the claimant may recover only such amount that directly attributable to that defendant.	No statute found.
New Mexico	**N.M. Stat. Ann. § 41-3A-1 (2010)** Several liability. In any cause of action to which the doctrine of comparative fault applies, the doctrine imposing joint and several liability upon two or more wrongdoers is abolished except as otherwise provided. The defendants shall be several.	**N.M. Stat. Ann. § 41-5-7 (2010)** if a judgment is made that patient is in need of future medical expenses, such payment for those expenses shall be made as expenses are incurred.
New York	**N.Y. C.P.L.R. § 1601 (2011)** Modified joint and several liability. New York statutory scheme governing limited liability of persons jointly liable modifies the common law rule of joint and several liability by limiting tort-feasor's liability in certain circumstances. *See Rangolan v. County of Nassau*, 749 N.E.2d 178 (N.Y. 2001).	**N.Y. C.P.L.R. § 5031 (2011)** In any award of damages for future pain and suffering in excess of $500,000, the court shall determine the greater of 35% of such damages or $500,000 and such amount shall be paid in a lump sum. The remaining amount of the award for future damages for future pain and suffering, shall be paid in a stream of payments over time over the period determined by trier of fact or eight years, whichever is less.
North Carolina	**N.C. Gen. Stat. § 1B-1(2010)** Joint and several liability. Except as otherwise provided, where two or more persons become jointly or severally liable in tort for the same injury to a person or for the same wrongful death, there is a right of contribution among them.	No statute found.
North Dakota	**N.D. Cent. Code § 32-03.2-02 (2011)** Several liability. When two or more parties are found to have contributed to the injury, the liability of each person is several only, and is not joint, and each party is liable only for the amount of damages attributable to that percentage of fault of that party.	**N.D. Cent. Code § 32-03.2-09 (2011)** If an injured party claims future economic damages for continuing institutional or custodial care that will be required for a period of more than two years, then any party may make periodic payments for this care if the court directs the trier of fact, upon request of a party, to make a special finding for this amount, separate from other future economic damages.

State	Joint and Several Liability	Periodic Payment of Damages
Ohio	**Ohio Rev. Code Ann. § 2307.22 (2011)** Modified joint and several liability. If more than 50% of the tortious conduct is attributable to one defendant, that defendant shall be jointly and severally liable in tort for all compensatory damages that represent economic loss. If less than 50% of the tortious conduct is attributable to a defendant, that defendant shall be liable only to the plaintiff only for that defendant's proportionate share of compensatory damages that represent economic loss.	**Ohio Rev. Code Ann. § 2323.55 (2011)** The court shall determine, in its discretion, whether all or part of future damages recoverable by plaintiff shall be received by plaintiff in a series of periodic payments rather than in a lump sum. If a court determines that plaintiff shall receive future damages in a series of periodic payments, it may order the payments only as to the amounts of future damages that exceed $50,000.
Oklahoma	**Okla. Stat. tit., 23, § 15 (2010)** Modified joint and several liability. The liability for damages cause by two or more persons shall be several only in proportion to their fault, except that a defendant shall be jointly and severally liable for damages if the percentage of responsibility attributed to the defendant is greater than 50%.	No statute found.
Oregon	**Or. Rev. Stat. § 31.610 (2009)** Several liability. In any civil action arising out of bodily injury, death or property damage, the liability of each defendant to plaintiff shall be several only and shall not be joint.	No statute found.
Pennsylvania	**42 Pa. Cons. Stat. § 7102 (2010)** Joint and several liability. The doctrine of joint and several liability applies against all defendants whom plaintiff is not barred from recovery.	**40 Pa. Cons. Stat. § 1303.509 (2010)** Future damage for medical and other related expenses shall be paid as periodic payments except if claimant objects and stipulates that the total amount of future damages, without reduction to the present value, does not exceed $100,000, payment of such damages shall not be made in periodic installments.
Rhode Island	**R.I. Gen. Laws § 10-6-2 (2010)** Joint and several liability. "Joint tortfeasors" means two or more persons jointly or severally liable in tort for the same injury to person or property whether or not judgment has been recovered against some or all of them.	**R.I. Gen. Laws § 9-21-13 (2010)** In any action to recover for personal injury in which damages, if liability is proved, are likely to exceed $150,000 the parties shall consider the use of periodic payments as a means of settlement.

State	Joint and Several Liability	Periodic Payment of Damages
South Carolina	**S.C. Code Ann. §§ 15-38-15; 15-38-20 (2010)** Modified joint and several liability. If indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability to any defendant whose conduct is determined to be less than 50% of the total conduct. where two or more people become jointly or severally liable in tort for the same injury, there is a right of contribution among them. The right of contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability.	No statute found.
South Dakota	**S.D. Codified Laws § 15-8-15.1 (2011)** Modified joint and several liability. If court enters judgment on basis of joint and several liability, any party who is allocated less than 50% of the total fault allocated to all parties may not be jointly liable for more than twice his percentage of the fault. Otherwise, the right of contribution exists among joint-tortfeasors.	**S.D. Codified Laws § 21-3A-1 *et seq* (2011)** Provides for periodic payments of only for claims against a physician, surgeon, dentist, hospital, sanitarium, registered nurse, licensed practical nurse, chiropractor or other practitioner of healing arts for malpractice error, mistake, or failure to cure.
Tennessee	**Tenn. Code Ann. § 29-11-101 (2011)** Several liability. *See McIntyre v. Ballentine*, 833 S.W.2d 52 (Tenn 1992).	No statute found.
Texas	**Tex. Civ. Prac. & Rem. § 33.013 (2010)** Modified joint and several liability. Each defendant is liable to claimant only for the percentage of fault apportioned to him, except that a defendant may be jointly and severally liable if the percentage of fault attributed to the defendant is greater than 50%.	**Tex. Civ. Prac. & Rem. § 74.503 (2010)** If an award for future damages exceeds $100,000, the court shall, at the request of the defendant, order that medical, health care, or custodial services, or future damages in those respective areas be paid in whole or in part rather than by lump sum payment.
Utah	**Utah Code Ann. § 78B-5-820 (2011)** Several liability. The maximum amount for which a defendant may be liable to any person seeking recovery is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that defendant.	**Utah Code Ann. § 78B-3-414 (2011)** In any malpractice action against a health care provider, the court shall, at the request of any party, order that future damages which exceed or equal $100,000 be paid by periodic payments rather than lump sum payment.

State	Joint and Several Liability	Periodic Payment of Damages
Vermont	**Vt. Stat. Ann. tit. 12, § 1036 (2011)** Several liability. Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed	No statute found.
Virginia	**Va. Code Ann. § 8.01-443 (2011)** Joint and several liability. The claimant may bring separate actions against all joint wrongdoers and proceed to judgment in each, or, if sued jointly, the claimant may proceed to judgment against them successively until judgment has been rendered against, or otherwise disposed of as to, all defendants, and no bar shall arise as to any of them by reason of a judgment against another, or others, until the judgment has been satisfied.	No statute found.
Washington	**Wash. Rev. Code Ann. § 4.22.070 (2011)** Modified joint and several liability. The liability of each defendant shall be several only and shall not be joint except where the trier of fact determines that the claimant was not at fault, then such defendants shall be jointly and severally liable for the sum of their proportionate shares of the claimant's total damages.	**Wash. Rev. Code Ann. § 4.56.260 (2011)** If an award of future damages is $100,000 or more, the court shall, at the request of a party, enter a judgment which provides for the periodic payment in whole or in part of the future economic damages.
West Virginia	**W. Va. Code Ann. § 55-7B-9 (2011)** Modified joint and several liability. If the trier of fact renders a verdict for the plaintiff, the court shall enter judgment of several, but not joint, liability against each defendant in accordance with the percentage of fault attributed to the defendant by the trier of fact.	No statute found.

State	Joint and Several Liability	Periodic Payment of Damages
Wisconsin	**Wis. Stat. § 895.045 (2010)** Modified joint and several liability. The liability of each person found to be causally negligent whose percentage of causal negligence is les than 51% is limited to the percentage of total causal negligence attributed to that person. A person found to be causally negligent whose percentage of causal negligence is 51% or more shall be jointly and severally liable for the damages allowed.	**Wis. Stat. § 655.27 (2010)** Regarding the Injured Patients and Families Compensation Fund, in the event the fund incurs liability for future payments exceeding $1,000,000 to any person under a single claim as a result of a settlement of judgment after May 25, 1995, the fund shall pay after deductions full medical expenses each year, plus an amount not to exceed $500,000 per year that will pay the remaining liability over the person's anticipated lifetime, or until the liability is paid in full.
Wyoming	**Wyo. Stat. Ann. § 1-1-109 (2011)** Several liability. Each defendant is liable only to the extent of the defendant's proportion of the total fault determined.	No statute found.

Source: Westlaw State Statutes database.

Notes: The statutory language included is from the current version of the state's code which may not reflect very recent legislative enactments yet to be codified.

Table A-5 sets forth limits on attorneys' contingency fees in the 50 states. Most statutes have a sliding scale, which limits the amount an attorney can collect to a certain percentage of the award recovered. This table does include provisions that address how attorneys' fees are to be calculated in light of an award for damages or how they are to be considered by the court. For example, the states of Arizona, Kansas, and Washington each have a statutory provisions on how a court shall, upon the request of a party, review the reasonableness of attorneys' fees in a health care action. It mandates that the court take into consideration factors such as (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; and (5) the time limitations imposed by the client or by the circumstances.[58] Another example is Alaska, which directs when an attorney's contingency fee is to be calculated when punitive damages are awarded.[59] This table also does not capture provisions on attorneys' fees like that of North Dakota, which declares that "the amount of the agreement in civil actions must be left to the agreement, express or implied, of the parties."[60] In states where only these types of statutory provisions were identified with respect to attorneys' fees, we have entered "no statute found."

[58] *See e.g.*, Ariz. Rev. Stat. § 12-568 (2010); Kan. Stat. Ann. § 7-121B (2010); Wash. Rev. Code Ann. § 7.70.70 (2011).

[59] Alaska Stat. § 09.60.080 (2011).

[60] N.D. Cent. Code § 28-26-01 (2011).

Table A-5. State Limits on Attorneys' Contingency Fees

State	Limits on Attorneys' Fees
Alabama	No statute found.
Alaska	No statute found.
Arizona	No statute found.
Arkansas	No statute found.
California	**Cal. Bus. & Prof. Code § 6146 (2010) Attorneys Fee Agreement: Limitations in amount.** (a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits: (1) 40% of the first fifty thousand dollars ($50,000) recovered. (2) 33⅓ % of the next fifty thousand dollars ($50,000) recovered. (3) 25% of the next five hundred thousand dollars ($500,000) recovered. (4) 15% of any amount on which the recovery exceeds six hundred thousand dollars ($600,000). The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.
Colorado	No statute found.

State	Limits on Attorneys' Fees
Connecticut	**Conn. Gen. Stat. § 52-251c (2010) Limitation on attorney contingency fees in personal injury, wrongful death and property damage actions. Waiver of limitation by claimant.** (a) In any claim or civil action to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after October 1, 1987, the attorney and the claimant may provide by contract, which contract shall comply with all applicable provisions of the rules of professional conduct governing attorneys adopted by the judges of the Superior Court, that the fee for the attorney shall be paid contingent upon, and as a percentage of: (1) Damages awarded and received by the claimant; or (2) the settlement amount received pursuant to a settlement agreement. (b) In any such contingency fee agreement such fee shall be the exclusive method for payment of the attorney by the claimant and shall not exceed an amount equal to a percentage of the damages awarded and received by the claimant or of the settlement amount received by the claimant as follows: (1) Thirty-three and one-third per cent of the first three hundred thousand dollars; (2) twenty-five per cent of the next three hundred thousand dollars; (3) twenty per cent of the next three hundred thousand dollars; (4) fifteen per cent of the next three hundred thousand dollars; and (5) ten per cent of any amount which exceeds one million two hundred thousand dollars. (c) Notwithstanding the provisions of subsection (b) of this section, a claimant may waive the percentage limitations of said subsection if the claim or civil action is so substantially complex, unique or different from other wrongful death, personal injury or property damage claims or civil actions as to warrant a deviation from such percentage limitations. (f) If a claimant waives the percentage limitations of subsection (b) of this section pursuant to this section, in no event shall (1) the total fee under the contingency fee agreement exceed thirty-three and one-third per cent of the damages awarded and received by the claimant or of the settlement amount received by the claimant, and (2) the claimant be required to repay any costs that the attorney incurred in investigating and prosecuting the claim or civil action if there is no recovery. (g) No fee shall be payable to any attorney who seeks a fee that exceeds the percentage limitations of subsection (b) of this section unless the claimant has waived such limitations pursuant to this section and the contingency fee agreement complies with the requirements of subsection (e) of this section.
Delaware	**Del. Code Ann. tit. 18, § 06865 (2011) Compensation for Health Care Injuries: Limitation on attorney's fees.** (a) The amount of the claimant's attorney's fees may not exceed the amounts in the following schedule: (1) 35% of the first $100,000 of damages; (2) 25% of the next $100,000 of damages; (3) 10% of the balance of any awarded damages.
District of Columbia	No statute found.
Florida	**Fla. Const. Art. 1, § 26 (2011) Claimant's right to fair compensation.** In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.
Georgia	No statute found.

State	Limits on Attorneys' Fees
Hawaii	**Haw. Rev. Stat. Ann. § 607-15.5 (2011) Attorneys' fees in tort actions.** In all tort actions in which a judgment is entered by a court of competent jurisdiction, attorneys' fees for both the plaintiff and the defendant shall be limited to a reasonable amount as approved by the court having jurisdiction of the action. In any tort action in which a settlement is effected, the plaintiff or the defendant may request that the amount of their respective attorneys' fees be subject to approval of the court having jurisdiction of the action.
Idaho	**Idaho Code Ann. § 12-120 (2011) Attorney's fees in civil actions.** (4) In actions for personal injury, where the amount of plaintiff's claim for damages does not exceed twenty-five thousand dollars ($25,000), there shall be taxed and allowed to the claimant, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees for the prosecution of the action, written demand for payment of the claim and a statement of claim must have been served on the defendant's insurer, if known, or if there is no known insurer, then on the defendant, not less than sixty (60) days before the commencement of the action; provided that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to 90% of the amount awarded to the plaintiff.
Illinois	**735 Ill. Comp. Stat. Ann. 5/2-1114 (2011) Contingent fees for attorneys in medical malpractice actions.** (a) In all medical malpractice actions the total contingent fee for plaintiff's attorney or attorneys shall not exceed the following amounts: 33⅓ % of the first $150,000 of the sum recovered; 25% of the next $850,000 of the sum recovered; and 20% of any amount recovered over $1,000,000 of the sum recovered. (c) The court may review contingent fee agreements for fairness. In special circumstances, where an attorney performs extraordinary services involving more than usual participation in time and effort the attorney may apply to the court for approval of additional compensation.
Indiana	**Ind. Code Ann. § 34-18-18-1 (2011) Medical Malpractice: Limitation on plaintiff's attorney's fees.** When a plaintiff is represented by an attorney in the prosecution of the plaintiff's claim, the plaintiff's attorney's fees from any award made from the patient's compensation fund may not exceed 15% of any recovery from the fund.
Iowa	**Iowa Code Ann. § 147.138 (2010) Health Related Professions Malpractice: Contingent fee of attorney reviewed by court.** In any action for personal injury or wrongful death against any physician and surgeon, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor or nurse licensed under this chapter or against any hospital licensed under chapter 135B, based upon the alleged negligence of the licensee in the practice of that profession or occupation, or upon the alleged negligence of the hospital in patient care, the court shall determine the reasonableness of any contingent fee arrangement between the plaintiff and the plaintiff's attorney.
Kansas	No statute found.
Kentucky	No statute found.
Louisiana	No statute found.

State	Limits on Attorneys' Fees
Maine	**Me. Rev. Stat. tit. 24, § 2961 (2011) Maine Health Security Act: Contingent fees.** 1. LIMITATION. In an action for professional negligence, the total contingent fee for the plaintiff's attorney or attorneys shall not exceed the following amounts, exclusive of litigation expenses: A. Thirty-three and one-third percent of the first $100,000 of the sum recovered; B. Twenty-five percent of the next $100,000 of the sum recovered; and C. Twenty percent of any amount over $200,000 of the sum recovered. 3. REVIEW. If the plaintiff prevails in the action for professional negligence, the plaintiff's attorney may petition the court to review the reasonableness of the fees permitted under subsection 1. The court may award a greater fee than that permitted by subsection 1, provided that: A. The court, considering the factors established in Maine Rules of Professional Conduct, Rule 1.5 as guides in determining the reasonableness of a fee, finds that the fees permitted by subsection 1 are inadequate to compensate the attorney reasonably for the attorney's services; and B. The court finds that the fee found reasonable under paragraph A does not exceed the percentages set forth in the contingent fee agreement between the attorney and plaintiff as the maximum amount of compensation the attorney may receive. An attorney may petition the court under this subsection only if, prior to the signing of a contingent fee agreement by the attorney and client, the attorney informs the client, orally and in writing, of the provisions of this section.
Maryland	**Md. Code Ann., Cts. & Jud. Proc. § 3-2A-07 (2011) Health Care Malpractice Claims: Award of Costs; Counsel fees.** (a) Action maintained in bad faith.—If the arbitration panel finds that the conduct of any party in maintaining or defending any action is in bad faith or without substantial justification, the panel may require the offending party, the attorney advising the conduct, or both, to pay to the adverse party the costs of the proceeding and reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it. A determination made under this subsection shall become part of the panel award and subject to judicial review. (b) Approval of disputed legal fee.—If a legal fee is in dispute, an attorney may not charge or collect compensation for services rendered in connection with an arbitration claim unless it is approved by the arbitration panel, or by the court in the event an action to nullify a panel determination has been filed therein.

State	Limits on Attorneys' Fees
Massachusetts	**Mass. Ann. Laws, ch. 231, § 60I (2010) Pleading and Practice: Limitation on Attorney Fees.** Attorney fees for services rendered on behalf of a claimant or defendant in a medical negligence case shall be fair and reasonable. An attorney representing a claimant may charge a client a contingency fee, which shall be subject to the rules and guidelines of the supreme judicial court. No contingent fee agreement, shall be enforced, and no attorney shall recover a fee thereunder, as a result of services rendered in an action against a provider of health care for malpractice, negligence, error, omission, mistake, or the unauthorized rendering of professional services if, at the time of judgment, the court determines that the amount of the recovery paid or to be paid to the plaintiff, after deduction of the attorney's reasonable expenses and disbursements for which the plaintiff is liable and the amount of the attorney's fee, is less than the total amount of the plaintiff's unpaid past and future medical expenses included in the recovery, unless the contingent attorney's fee: (a) is twenty per cent or less of the plaintiff's recovery; (b) is reduced to twenty per cent or less of the plaintiff's recovery; or (c) is reduced to a level which permits the plaintiff to be paid his unpaid past and future medical expenses included in the recovery. An attorney shall not contract for or collect a contingent fee for representing any person seeking damages in connection with an action for malpractice, negligence, error, omission, mistake, or the unauthorized rendering of professional services against a provider of health care in excess of the following limits: (1) Forty per cent of the first one hundred and fifty thousand dollars recovered; (2) Thirty-three and one-third per cent of the next one hundred and fifty thousand dollars recovered; (3) Thirty per cent of the next two hundred thousand dollars recovered; (4) Twenty-five per cent of any amount by which the recovery exceeds five hundred thousand dollars. The limitations shall apply regardless of whether the recovery is by settlement, arbitration or judgment. Nothing herein shall preclude any attorney from contracting to represent a client for less than the above limits, nor shall anything herein preclude a court from assessing reasonable attorney's fees at any amount below the above limits or from determining that attorney's fees below such limits are unreasonably high in a particular case.

State	Limits on Attorneys' Fees
Michigan	**Mich. Ct. R 8.121 (2011) Contingent Fees in Claims or Actions for Personal Injury and Wrongful Death.** (A) Allowable Contingent Fee Agreements. In any claim or action for personal injury or wrongful death based upon the alleged conduct of another, in which an attorney enters into an agreement, expressed or implied, whereby the attorney's compensation is dependent or contingent in whole or in part upon successful prosecution or settlement or upon the amount of recovery, the receipt, retention, or sharing by such attorney, pursuant to agreement or otherwise, of compensation which is equal to or less than the fee stated in subrule (B) is deemed to be fair and reasonable. The receipt, retention, or sharing of compensation which is in excess of such a fee shall be deemed to be the charging of a "clearly excessive fee" in violation of MRPC 1.5(a). (B) Maximum Fee. The maximum allowable fee for the claims and actions referred to in subrule (A) is one-third of the amount recovered. (C) Computation. (1) The amount referred to in subrule (B) shall be computed on the net sum recovered after deducting from the amount recovered all disbursements properly chargeable to the enforcement of the claim or prosecution of the action. In computing the fee, the costs as taxed and any interest included in or upon the amount of a judgment shall be deemed part of the amount recovered. (2) In the case of a settlement payable in installments, the amount referred to in subrule (B) shall be computed using the present value of the future payments. (a) If an annuity contract will be used to fund the future payments, "present value" is the actual cost of purchasing the annuity contract. The attorney for the defendant must disclose to the court and the parties the amount paid for the annuity contract, after any rebates or other discounts. (b) If the defendant will make the future payments directly, "present value" is the amount that an entity of the same financial standing as the defendant would pay for an annuity contract. The court may appoint an independent expert to certify the "present value" as defined in this paragraph. The court may base its findings on the expert's testimony or affidavit. (D) Agreements for Lower Fees. An attorney may enter into contingent fee arrangements calling for less compensation than that allowed by subrule (B).
Minnesota	**Minn. Stat. Ann. § 548.251 (2010) Judgments: Collateral Source Calculations.** Subd. 4. Calculation of attorney fees. If the fees for legal services provided to the plaintiff are based on a percentage of the amount of money awarded to the plaintiff, the percentage must be based on the amount of the award as adjusted under subdivision 3. Any subrogated provider of a collateral source not separately represented by counsel shall pay the same percentage of attorney fees as paid by the plaintiff and shall pay its proportionate share of the costs.
Mississippi	No statute found.
Missouri	No statute found.
Montana	No statute found.

State	Limits on Attorneys' Fees
Nebraska	**Neb. Rev. Stat. Ann. § 44-2834 (2010) Nebraska Hospital Medical Liability Act: Cause of action; attorney's fees; court costs; loss of earnings; when payable.** (1) In all cases against a health care provider for malpractice or professional negligence, upon motion of either party the court shall review the attorney's fees incurred by that party and allow such compensation as the court shall deem reasonable. (2) In all cases against health care providers for malpractice or professional negligence, the court may, upon application by the prevailing party, in its discretion and in an amount determined in its discretion tax as costs payable to the prevailing party the reasonable costs of preparation and trial including reasonable attorney's fees and the reasonable loss of earnings by the prevailing party occasioned by the trial if the court finds that the losing party did not have a reasonable chance of recovery or a reasonable chance of a successful defense. (3) A patient shall have the right to agree with his attorney to pay for the attorney's services on a mutually satisfactory per diem basis. Such election shall be exercised in written form at the time of employment or by written agreement thereafter entered into with his attorney.
Nevada	**Nev. Rev. Stat. Ann. § 7.095 (2010) Limitations on contingent fees for representation of persons in certain actions against providers of health care.** 1. An attorney shall not contract for or collect a fee contingent on the amount of recovery for representing a person seeking damages in connection with an action for injury or death against a provider of health care based upon professional negligence in excess of: (a) 40% of the first $50,000 recovered; (b) 33⅓ % of the next $50,000 recovered; (c) 25% of the next $500,000 recovered; and (d) 15% of the amount of recovery that exceeds $600,000. 2. The limitations set forth in subsection 1 apply to all forms of recovery, including, without limitation, settlement, arbitration and judgment.
New Hampshire	**N.H. Rev. Stat. Ann. § 508:4-e (2011) Attorneys' Fees for Services.** I. Contingent fee agreements between attorney and client shall be governed by Rules of Professional Conduct, Rule 1.5 as it may be amended by the supreme court from time to time and by any other rules regarding fees which are adopted or amended by the court. II. No attorney shall enter into such a contingent fee arrangement with his or her client without first advising the client of his or her right and affording the client an opportunity to retain the attorney under an arrangement whereby the attorney would be compensated on the basis of the reasonable value of his or her services. III. All fees and costs for actions, resulting in settlement or judgment of $200,000 or more, shall be subject to approval by the court. **N.H. Rev. Stat. Ann. § 507-C:8 (2011) Actions for Medical Injury: Contingent Fees.** I. In any action for medical injury, no attorney representing any party to such action shall contract for, charge or collect on a contingent fee basis any fee for his services to such party in excess of the following limits: (a) Fifty percent of the first $1,000 recovered; (b) Forty percent of the next $2,000 recovered; (c) Thirty-three and one-third percent of the next $97,000 recovered; (d) Twenty percent of all in excess of $100,000 recovered; (e) Where the amount recovered is for the benefit of an infant or incompetent and the action is settled without trial, the foregoing limits shall apply, except that the fee in any amount recovered up to $50,000 shall not exceed twenty five percent. This provision § 507-C:8 declared unconstitutional See Carson v. Mauerer, 424 A.2d 825 (N.H. 1980).

State	Limits on Attorneys' Fees
New Jersey	**N.J. Ct. R. § 1:21-7 (2011) Contingent Fees.** (b) An attorney shall not enter into a contingent fee arrangement without first having advised the client of the right and afforded the client an opportunity to retain the attorney under an arrangement for compensation on the basis of the reasonable value of the services. (c) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another, including products liability claims and claims among family members that are subject to Part V of these Rules but excluding statutorily based discrimination and employment claims, and the client is not a subrogee, an attorney shall not contract for, charge, or collect a contingent fee in excess of the following limits: (1) 33⅓ % on the first $500,000 recovered; (2) 30% on the next $500,000 recovered; (3) 25% on the next $500,000 recovered; (4) 20% on the next $500,000 recovered; and (5) on all amounts recovered in excess of the above by application for reasonable fee in accordance with the provisions of paragraph (f) hereof; and (6) where the amount recovered is for the benefit of a client who was a minor or mentally incapacitated when the contingent fee arrangement was made, the foregoing limits shall apply, except that the fee on any amount recovered by settlement without trial shall not exceed 25%. (e) Paragraph (c) of this rule is intended to fix maximum permissible fees and does not preclude an attorney from entering into a contingent fee arrangement providing for, or from charging or collecting a contingent fee below such limits. In all cases contingent fees charged or collected must conform to RPC 1.5(a).
New Mexico	No statute found.
New York	**N.Y. Jud. Law § 474-a (2011) Attorneys and Counselors: Contingent fees for attorneys in claims or actions for medical, dental or podiatric malpractice.** 2. Notwithstanding any inconsistent judicial rule, a contingent fee in a medical, dental or podiatric malpractice action shall not exceed the amount of compensation provided for in the following schedule: 30 % of the first $250,000 of the sum recovered; 25 % of the next $250,000 of the sum recovered; 20 % of the next $500,000 of the sum recovered; 15 % of the next $250,000 of the sum recovered; 10 % of any amount over $1,250,000 of the sum recovered.
North Carolina	No statute found.
North Dakota	No statute found.
Ohio	**Ohio Rev. Code Ann. § 2323.43 (2011) Medical Malpractice Actions: Limits on compensatory damages representing noneconomic loss.** (F) (1) If pursuant to a contingency fee agreement between an attorney and a plaintiff in a civil action upon a medical claim, dental claim, optometric claim, or chiropractic claim, the amount of the attorney's fees exceed the applicable amount of the limits on compensatory damages for noneconomic loss as provided in division (A)(2) or (3) of this section, the attorney shall make an application in the probate court of the county in which the civil action was commenced or in which the settlement was entered. The application shall contain a statement of facts, including the amount to be allocated to the settlement of the claim, the amount of the settlement or judgment that represents the compensatory damages for economic loss and noneconomic loss, the relevant provision in the contingency fee agreement, and the dollar amount of the attorney's fees under the contingency fee agreement. The application shall include the proposed distribution of the amount of the judgment or settlement.

State	Limits on Attorneys' Fees
Oklahoma	**Okla. Stat. tit. 5, § 7 (2010) Attorneys and Counselors: Contingent fee—Limitation on amount—Compromise or settlement—Effect on lien—Certain contracts void.** It shall be lawful for an attorney to contract for a percentage or portion of the proceeds of a client's cause of action or claim not to exceed 50% of the net amount of such judgment as may be recovered, or such compromise as may be made, whether the same arises ex contractu or ex delicto, and no compromise or settlement entered into by a client without such attorney's consent shall affect or abrogate the lien provided for in this chapter. Provided that all such contracts in personal injury or wrongful death cases including, but not restricted to, cases in which jurisdiction is in the Industrial Commission, shall be void and unenforceable (1) if secured as a result of the intervention of any laymen, association, or corporation for compensation, or promise of compensation, or anticipation of gift, compensation or hope of reward, or (2) where any laymen, association or corporation has a direct or indirect interest in, or growing out of, any judgment arising out of such claim recovery or compensation from, or settlement of any such claim.
Oregon	**Or. Rev. Stat. § 31.735 (2010) Tort Actions Damages: Distribution of punitive damages; notice to Department of Justice; order of application.** (1) Upon the entry of a verdict including an award of punitive damages, the Department of Justice shall become a judgment creditor as to the punitive damages portion of the award to which the Criminal Injuries Compensation Account is entitled pursuant to paragraph (b) of this subsection, and the punitive damage portion of an award shall be allocated as follows: (a) Forty percent shall be paid to the prevailing party. The attorney for the prevailing party shall be paid out of the amount allocated under this paragraph, in the amount agreed upon between the attorney and the prevailing party. However, in no event may more than twenty percent of the amount awarded as punitive damages be paid to the attorney for the prevailing party.
Pennsylvania	Limits declared unconstitutional in Heller v. Frankston, 475 A.2d 1291 (Pa. 1984).
Rhode Island	No statute found.
South Carolina	No statute found.
South Dakota	No statute found.
Tennessee	**Tenn. Code Ann. § 29-26-120 (2011) Medical Malpractice: Attorneys' fees**. Compensation for reasonable attorneys' fees in the event an employment contract exists between the claimant and claimant's attorney on a contingent fee arrangement shall be awarded to the claimant's attorney in a malpractice action in an amount to be determined by the court on the basis of time and effort devoted to the litigation by the claimant's attorney, complexity of the claim and other pertinent matters in connection therewith, not to exceed 33⅓ % of all damages awarded to the claimant.
Texas	No statute found.
Utah	**Utah Code Ann. § 78B-3-411 (2011) Utah Health Care Malpractice Act: Limitation on attorney's contingency fee in malpractice action.** (1) In any malpractice action against a health care provider as defined in Section 78B-3-403, an attorney may not collect a contingent fee for representing a client seeking damages in connection with or arising out of personal injury or wrongful death caused by the negligence of another which exceeds 33- 1/3% of the amount recovered. (2) This limitation applies regardless of whether the recovery is by settlement, arbitration, judgment, or whether appeal is involved.
Vermont	No statute found.
Virginia	No statute found.
Washington	No statute found.

State	Limits on Attorneys' Fees
West Virginia	No statute found.
Wisconsin	**Wis. Stat. § 655.013. (2010) Health Care Liability And Injured Patients And Families Compensation: Attorney fees.** (1) With respect to any act of malpractice after July 24, 1975, for which a contingency fee arrangement has been entered into before June 14, 1986, the compensation determined on a contingency basis and payable to all attorneys acting for one or more plaintiffs or claimants is subject to the following unless a new contingency fee arrangement is entered into that complies with subs. (1m) and (1t): (a) The determination shall not reflect amounts previously paid for medical expenses by the health care provider or the providers insurer. (b) The determination shall not reflect payments for future medical expense in excess of 25,000. (1m) Except as provided in sub. (1t), with respect to any act of malpractice for which a contingency fee arrangement is entered into on and after June 14, 1986, in addition to compensation for the reasonable costs of prosecution of the claim, the compensation determined on a contingency basis and payable to all attorneys acting for one or more plaintiffs or claimants is subject to the following limitations: (a) Except as provided in par. (b), 33 1/3% of the first 1,000,000 recovered. (b) 25% of the first 1,000,000 recovered if liability is stipulated within 180 days after the date of filing of the original complaint and not later than 60 days before the first day of trial. (c) 20% of any amount in excess of 1,000,000 recovered. (1t) A court may approve attorney fees in excess of the limitations under sub. (1m) upon a showing of exceptional circumstances, including an appeal. (2) An attorney shall offer to charge any client in a malpractice proceeding or action on a per diem or per hour basis. Any such agreement shall be made at the time of the employment of the attorney. An attorneys fee on a per diem or per hour basis is not subject to the limitations under sub. (1) or (1m).
Wyoming	**Wyo. Contingent Fees Rule 5 (2011) Court review.** (a) It is recognized that contingent fees vary in amount depending upon those factors which are described in paragraph (f) of this rule and that a common contingent fee in casualty and wrongful death cases is 33⅓ % of amounts recovered prior to appeal and 45-50% of amounts recovered on appeal. Contingent fees which do not exceed the following schedule will be presumed to be reasonable and not excessive where the total recovery does not exceed one million dollars ($1,000,000): (1) 33⅓ % of the recovery if the claim is settled prior to or within sixty (60) days after suit is filed; (2) 40% of the recovery if the claim is settled more than sixty (60) days after filing suit or if a judgment is entered upon a verdict. (b) For those amounts of a recovery in excess of one million dollars ($1,000,000) a contingent fee of 30% of such excess sum over one million dollars ($1,000,000) shall be presumed reasonable and not excessive. (c) The provisions of this rule are not intended to abridge the freedom of the attorneys and clients to contract for different percentages.

Source: LexisNexis State Statutes database.

Notes: The statutory language included is from the current version of the state's code which may not reflect very recent legislative enactments yet to be codified.

Table A-6 sets forth the statute of limitations for medical malpractice actions and product liability actions in the 50 states. Generally, for each state, this table identifies first, the medical malpractice statute of limitations, and second, the product liability statute of limitations provision. Where no product-liability specific statute could be identified, we included the general statute of limitations on an action to recover damages for personal injury or the "catch-all" statute of limitations; e.g., the D.C. Code § 12-301 provides "for which a limitation is not otherwise specifically provided—3 years" and Delaware's statute of limitations governing "personal injuries" would govern an action for product liability. (*See* Del. Code Ann titl. 10, § 8119.)

Many states also have various exceptions for a medical malpractice or product liability-specific statute of limitations depending on the age or status of the plaintiff, the time or manner of discovery, and the nature of the injury. For example, states commonly provide an extended statute of limitations if the plaintiff is a minor or suffering from a mental disability. Arizona, for instance, provides that "if a person ... is at the time the cause of action accrues either under eighteen years of age or of unsound mind, the period of such disability shall not be deemed a portion of the period limited for commencement of the action. Such person shall have the same time after removal of the disability which is allowed to others." (Ariz. Rev. Stat. § 12-502 (2011).) California, like many other states, extends time limitations for an action for damages sustained during birth. (*See, e.g.*, Cal. Civ. Proc. Code § 340.4 (2010).)[61] Louisiana and New York have a special time limitation for an action based blood transfusions tainted with HIV or AIDS. (*See* La. Rev. Stat. § 9:5628.1 (2011)[62] and N.Y. C.P.L.R. § 214-3 (2011).[63]) Many states, if not all, also have a statute of limitations on a specific product that is or was the subject of class action lawsuits. These include the Dalkon Shield Intrauterine Device (*see* Mass. Ann. Laws, ch. 260 § 2E (2010)) and breast implants (*see* Md. Code Ann., Cts. & Jud. Proc § 50116 (2011)). As these exceptions span a variety of areas across the 50 states, this table generally does not include these types of provisions, though the reader should be aware that many states have these special exceptions that may affect the general time limitations for certain actions.

[61] The California provision states that an action "by or on behalf of a minor for personal injuries sustained before or in the course of his or her birth must be commenced within six years after the date of birth, and the time the minor is under any disability mentioned in Section 352 shall not be excluded in computing the time limited for the commencement of the action." Cal. Civ. Proc. Code § 340.4 (2010).

[62] La. Rev. Stat. Ann. § 9:5628.1 (2011) statute of limitation provision for actions for liability from the use of blood or tissue.

[63] Section 214-3 of N.Y. Civil Practice Law and Rules is the time limitation for an action to recover damages for personal injury caused by the infusion of such blood products which result in the contraction of the human immunodeficiency virus (HIV) and/or AIDS.

Table A-6. Statute of Limitations for Medical Malpractice and Product Liability Actions

State	Statute of Limitation
Alabama	**Ala. Code § 6-5-482 (2011) Medical Liability Actions: Statute of limitations.** (a) All actions against physicians, surgeons, dentists, medical institutions, or other health care providers for liability, error, mistake, or failure to cure, whether based on contract or tort, must be commenced within two years next after the act, or omission, or failure giving rise to the claim, and not afterwards; provided, that if the cause of action is not discovered and could not reasonably have been discovered within such period, then the action may be commenced within six months from the date of such discovery or the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier; provided further, that in no event may the action be commenced more than four years after such act; except, that an error, mistake, act, omission, or failure to cure giving rise to a claim which occurred before September 23, 1975, shall not in any event be barred until the expiration of one year from such date. **Ala. Code § 6-5-502 (2011) Statute of limitations.** (a) All product liability actions against an original seller must be commenced within the following time limits and not otherwise: (1) Except as specifically provided in subsections (b), (c), and (e) of this section, within one year of the time the personal injury, death, or property damage occurs; and (2) Except as specifically provided in subsections (b), (c), and (e) of this section, each element of a product liability action shall be deemed to accrue at the time the personal injury, death, or property damage occurs; (b) Where the personal injury, including personal injury resulting in death, or property damage (i) either is latent or by its nature is not discoverable in the exercise of reasonable diligence at the time of its occurrence, and (ii) is the result of ingestion of or exposure to some toxic or harmful or injury-producing substance, element or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma, then, in that event, the product liability action claiming damages for such personal injury, or property damage must be commenced within one year from the date such personal injury or property damage is or in the exercise of reasonable diligence should have been discovered by the plaintiff or the plaintiff's decedent, and in such cases each of the elements of the product liability action shall be deemed to accrue at the time the personal injury is or in the exercise of reasonable diligence should have been discovered by the plaintiff or the plaintiff's decedent; and (c) Notwithstanding the provisions of subsections (a) and (b) of this section, a product liability action against an original seller must be brought within 10 years after the manufactured product is first put to use by any person or business entity who did not acquire the manufactured product for either resale or other distribution in its unused condition or for incorporation as a component part in a manufactured product which is to be sold or otherwise distributed in its unused condition. (d) The original seller may by express written agreement only waive or extend the period of time provided for in subsection (c) of this section; and (e) (1) Notwithstanding the provisions of subsection (c) of this section, if a plaintiff or plaintiff's decedent is entitled to maintain a product liability action because of the failure of an original seller to alter, repair, recall, inspect, or issue warnings or instructions about the manufactured product, or otherwise to take any action or precautions with regard to the safety of the manufactured product for the benefit of users or consumers after the manufactured product was sold or otherwise distributed by an original seller, and, if any federal or state governmental agency shall impose a requirement so to alter, repair, recall, inspect, or issue warnings or instructions about the manufactured product or otherwise to take any actions or precautions with regard to the safety of the manufactured product for the benefit of users or consumers after the manufactured product was sold or otherwise distributed by an original seller, then, if these two events have occurred, a product liability action for damages on account of such failure for personal injury, death, or property damage must be commenced within one year of the time the personal injury,

State	Statute of Limitation
	death, or property damage resulting from such failure occurs; (2) In product liability actions predicated upon the failure to act and the governmental action, set forth in subdivision (1) of this subsection, where the personal injury, including personal injury resulting in death, or property damage (i) either is latent or by its nature is not discoverable in the exercise of reasonable diligence at the time of its occurrence, and (ii) is the result of the ingestion of or exposure to some toxic or harmful or injury-producing substance, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma, then in that event, the product liability action claiming damages for such personal injury or property damage must be commenced within one year from the date such personal injury or property damage is or in the exercise of reasonable diligence should have been discovered by the plaintiff or the plaintiff's decedent and in such cases each of the elements of the product liability action shall be deemed to accrue at the time the personal injury or property damage is or in the exercise of reasonable diligence should have been discovered by the plaintiff or plaintiff's decedent; and (3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, a product liability action against an original seller must be brought within 10 years after the date of the imposition of such requirement by such governmental agency.
Alaska	**Alaska Stat. § 09.10.070 (2011) Actions for torts, for injury to personal property, for certain statutory liabilities, and against peace officers and coroners to be brought in two years.** (a) Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action. **Alaska Stat. § 09.10.055 (2011) Statute of repose of 10 years.** (a) Notwithstanding the disability of minority described under AS 09.10.140(a), a person may not bring an action for personal injury, death, or property damage unless commenced within 10 years of the earlier of the date of *** (2) the last act alleged to have caused the personal injury, death, or property damage. (b) This section does not apply if (1) the personal injury, death, or property damage resulted from (A) prolonged exposure to hazardous waste; (B) an intentional act or gross negligence; (C) fraud or misrepresentation; (D) breach of an express warranty or guarantee; (E) a defective product; in this subparagraph, "product" means an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce; or (F) breach of trust or fiduciary duty; (2) the facts that would give notice of a potential cause of action are intentionally concealed; (3) a shorter period of time for bringing the action is imposed under another provision of law; (4) the provisions of this section are waived by contract; or (5) the facts that would constitute accrual of a cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian. (c) The limitation imposed under (a) of this section is tolled during any period in which there exists the undiscovered presence of a foreign body that has no therapeutic or diagnostic purpose or effect in the body of the injured person and the action is based on the presence of the foreign body.

State	Statute of Limitation
Arizona	**Ariz. Rev. Stat. § 12-542 (2011) Personal Actions: Injury to person; injury when death ensues; injury to property; conversion of property; forcible entry and forcible detainer; two year limitation.** Except as provided in section 12-551 there shall be commenced and prosecuted within two years after the cause of action accrues, and not afterward, the following actions: 1. For injuries done to the person of another including causes of action for medical malpractice as defined in section 12-561. 2. For injuries done to the person of another when death ensues from such injuries, which action shall be considered as accruing at the death of the party injured. **Ariz. Rev. Stat. § 12-551 (2011) Product liability.** A product liability action as defined in section 12-681 shall be commenced and prosecuted within the period prescribed in section 12-542, except that no product liability action may be commenced and prosecuted if the cause of action accrues more than twelve years after the product was first sold for use or consumption, unless the cause of action is based upon the negligence of the manufacturer or seller or a breach of an express warranty provided by the manufacturer or seller. **Ariz. Rev. Stat. § 12-681 (2011) Definitions.** 5. "Product liability action" means any action brought against a manufacturer or seller of a product for damages for bodily injury, death or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, sale, use or consumption of any product, the failure to warn or protect against a danger or hazard in the use or misuse of the product or the failure to provide proper instructions for the use or consumption of any product.
Arkansas	**Ark. Code Ann. § 16-114-203 (2010) Actions for Medical Injury: Statute of limitations.** (a) Except as otherwise provided in this section, all actions for medical injury shall be commenced within two (2) years after the cause of action accrues. (b) The date of the accrual of the cause of action shall be the date of the wrongful act complained of and no other time. However, where the action is based upon the discovery of a foreign object in the body of the injured person which is not discovered and could not reasonably have been discovered within such two-year period, the action may be commenced within one (1) year from the date of discovery or the date the foreign object reasonably should have been discovered, whichever is earlier. (c) (1) If an individual is nine (9) years of age or younger at the time of the act, omission, or failure complained of, the minor or person claiming on behalf of the minor shall have until the later of the minor's eleventh birthday or two (2) years from the act, omission, or failure in which to commence an action. (2) However, if no medical injury is known and could not reasonably have been discovered prior to the minor's eleventh birthday, then the minor or his representative shall have until two (2) years after the medical injury is known or reasonably could have been discovered, or until the minor's nineteenth birthday, whichever is earlier, in which to commence an action. **Ark. Code Ann. § 16-116-103 (2010) Limitation on actions.** All product liability actions shall be commenced within three (3) years after the date on which the death, injury, or damage complained of occurs.
California	**Cal. Civ. Proc. Code § 340.5 (2010) Professional negligence of health care provider; Tolling of time limitation.** In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person. Actions by a minor shall be commenced within three years from the date of the alleged wrongful act except

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	that actions by a minor under the full age of six years shall be commenced within three years or prior to his eighth birthday whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which parent or guardian and defendant's insurer or health care provider have committed fraud or collusion in the failure to bring an action on behalf of the injured minor for professional negligence. ***See also* Cal. Civ. Proc. Code § 340.4 (2010) Statute of limitations for action by minor for personal injuries sustained before or during birth.** **Cal. Civ. Proc. Code § 335.1 (2011) Assault and battery; Personal injury; Wrongful death.** Within two years: An action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another.
Colorado	**Colo. Rev. Stat. § 13-80-102 (2010) General limitation of actions - two years.** (1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within two years after the cause of action accrues, and not thereafter: (a) Tort actions, including but not limited to actions for negligence, trespass, malicious abuse of process, malicious prosecution, outrageous conduct, interference with relationships, and tortious breach of contract; except that this paragraph (a) does not apply to any tort action arising out of the use or operation of a motor vehicle as set forth in section 13-80-101 (1) (n); (b) All actions for strict liability, absolute liability, or failure to instruct or warn; (c) All actions, regardless of the theory asserted, against any veterinarian; (d) All actions for wrongful death. **Colo. Rev. Stat. § 13-80-102.5 (2010) Limitation of actions - medical or health care.** (1) Except as otherwise provided in this section, no action alleging negligence, breach of contract, lack of informed consent, or other action arising in tort or contract to recover damages from any health care institution, as defined in paragraph (a) of subsection (2) of this section, or any health care professional, as defined in paragraph (b) of subsection (2) of this section, shall be maintained unless such action is instituted within two years after the date that such action accrues pursuant to section 13-80-108 (1), but in no event shall an action be brought more than three years after the act or omission which gave rise to the action. (2) For the purposes of this section: (a) "Health care institution" means any hospital, health care facility, dispensary, clinic, or other institution which is licensed or certified as such under the laws of this state. (b) "Health care professional" means any physician, nurse, dentist, chiropractor, pharmacist, optometrist, psychologist, podiatrist, physical therapist, or other health care practitioner who is licensed to perform such profession under the laws of this state. (3) The limitation of actions provided in subsection (1) of this section shall not apply under the following circumstances: (a) If the act or omission which gave rise to the cause of action was knowingly concealed by the person committing such act or omission, in which case the action may be maintained if instituted within two years after the person bringing the action discovered, or in the exercise of reasonable diligence and concern should have discovered, the act or omission; or (b) If the act or omission consisted of leaving an unauthorized foreign object in the body of the patient, in which case the action may be maintained if instituted within two years after the person bringing the action discovered, or in the exercise of reasonable diligence and concern should have discovered, the act or omission; or (c) If both the physical injury and its cause are not known or could not have been known by the exercise of reasonable diligence; or (d) If the action is brought by or on behalf of: (I) A minor under eight years of age who was under six years of age on the date of the

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	occurrence of the act or omission for which the action is brought, in which case the action may be maintained at any time prior to his attaining eight years of age; or (II) A person otherwise under disability as defined in section 13-81-101, in which case the action may be maintained within the time period as provided in section 13-81-103. **Colo. Rev. Stat. § 13-80-106 (2010) Limitation of actions against manufacturers or sellers of products.** (1) Notwithstanding any other statutory provisions to the contrary, all actions except those governed by section 4-2-725, C.R.S., brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product shall be brought within two years after the claim for relief arises and not thereafter. (2) If any person entitled to bring any action mentioned in this section is under the age of eighteen years, mentally incompetent, imprisoned, or absent from the United States at the time the cause of action accrues and is without spouse or natural or legal guardian, such person may bring said action within the time limit specified in this section after the disability is removed. If such person has a legal representative, such person's representative shall bring the action within the period of limitation imposed by this section.
Connecticut	**Conn. Gen. Stat. § 52-584 (2010) Limitation of action for injury to person or property caused by negligence, misconduct or malpractice.** No action to recover damages for injury to the person, or to real or personal property, caused by negligence, or by reckless or wanton misconduct, or by malpractice of a physician, surgeon, dentist, podiatrist, chiropractor, hospital or sanatorium, shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained of, except that a counterclaim may be interposed in any such action any time before the pleadings in such action are finally closed. **Conn. Gen. Stat. § 52-577a (2010) Limitation of action based on product liability claim.** (a) No product liability claim, as defined in section 52-572m, shall be brought but within three years from the date when the injury, death or property damage is first sustained or discovered or in the exercise of reasonable care should have been discovered, except that, subject to the provisions of subsections (c), (d) and (e) of this section, no such action may be brought against any party nor may any party be impleaded pursuant to subsection (b) of this section later than ten years from the date that the party last parted with possession or control of the product. (d) The ten-year limitation provided for in subsection (a) of this section shall be extended pursuant to the terms of any express written warranty that the product can be used for a period longer than ten years, and shall not preclude any action against a product seller who intentionally misrepresents a product or fraudulently conceals information about it, provided the misrepresentation or fraudulent concealment was the proximate cause of harm of the claimant.
Delaware	**Del. Code Ann. tit. 10, § 8128 (2011) Health care malpractice action limitations.** No action for the recovery of damages upon a claim based upon alleged health care malpractice, whether in the nature of a tort action or breach of contract action, shall be brought after the expiration of the time period for bringing such action set forth in § 6856 of Title 18. **Del. Code Ann. tit. 18, § 6856 (2011) Health Care Medical Negligence Insurance and Litigation: General limitations.** No action for the recovery of damages upon a claim against a health care provider for personal injury, including personal injury which results in death, arising out of medical negligence shall be brought after the expiration of 2 years from the date upon which such injury occurred; provided, however, that:

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	(1) Solely in the event of personal injury the occurrence of which, during such period of 2 years, was unknown to and could not in the exercise of reasonable diligence have been discovered by the injured person, such action may be brought prior to the expiration of 3 years from the date upon which such injury occurred, and not thereafter; and (2) A minor under the age of 6 years shall have until the latter of time for bringing such an action as provided for hereinabove or until the minor's 6th birthday in which to bring an action. (3) a. Notwithstanding any provision to the contrary, a cause of action based on the sexual abuse of a child patient by a health care provider may be brought at any time following the commission of the act or acts that constituted the sexual abuse. A civil cause of action for sexual abuse of a child patient by a health care provider shall be based upon sexual acts which would constitute a criminal offense under the Delaware Code. **Del. Code Ann. tit. 10, § 8119 (2011) Personal injuries.** No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained; subject, however, to the provisions of § 8127 of this title.
District of Columbia	**D.C. Code § 12-301 (2011) Limitation of time for bringing actions.** Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues: (8) for which a limitation is not otherwise specially prescribed—3 years.
Florida	**Fla. Stat. Ann. § 95.11 (2011) Limitations other than for the recovery of real property.** Actions other than for recovery of real property shall be commenced as follows: (4) Within two years. (a) An action for professional malpractice, other than medical malpractice, whether founded on contract or tort; provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence. However, the limitation of actions herein for professional malpractice shall be limited to persons in privity with the professional. (b) An action for medical malpractice shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of action accrued, except that this 4-year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday. An "action for medical malpractice" is defined as a claim in tort or in contract for damages because of the death, injury, or monetary loss to any person arising out of any medical, dental, or surgical diagnosis, treatment, or care by any provider of health care. The limitation of actions within this subsection shall be limited to the health care provider and persons in privity with the provider of health care. In those actions covered by this paragraph in which it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the injury the period of limitations is extended forward 2 years from the time that the injury is discovered or should have been discovered with the exercise of due diligence, but in no event to exceed 7 years from the date the incident giving rise to the injury occurred, except that this 7-year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday. This paragraph shall not apply to actions for which ss. 766.301-766.316 provide the exclusive remedy. **Fla. Stat. Ann. § 95.11 (2011) Limitations other than for the recovery of real property.** (3) Within four years. (a) An action founded on negligence (e) An action for injury to a person founded on the design, manufacture, distribution, or sale of personal property that is not permanently incorporated in an improvement to real property,

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	including fixtures. **Fla. Stat. Ann. § 95.031 (2011) Computation of time.** (b) An action for products liability under s. 95.11(3) must be begun within the period prescribed in this chapter, with the period running from the date that the facts giving rise to the cause of action were discovered, or should have been discovered with the exercise of due diligence, rather than running from any other date prescribed elsewhere in s. 95.11(3), except as provided within this subsection. Under no circumstances may a claimant commence an action for products liability, including a wrongful death action or any other claim arising from personal injury or property damage caused by a product, to recover for harm allegedly caused by a product with an expected useful life of 10 years or less, if the harm was caused by exposure to or use of the product more than 12 years after delivery of the product to its first purchaser or lessee who was not engaged in the business of selling or leasing the product or of using the product as a component in the manufacture of another product. All products, except those included within subparagraph 1. or subparagraph 2., are conclusively presumed to have an expected useful life of 10 years or less.
Georgia	**Ga. Code Ann. § 9-3-71 (2011) Limitations for Malpractice Actions: General limitation.** (a) Except as otherwise provided in this article, an action for medical malpractice shall be brought within two years after the date on which an injury or death arising from a negligent or wrongful act or omission occurred. (b) Notwithstanding subsection (a) of this Code section, in no event may an action for medical malpractice be brought more than five years after the date on which the negligent or wrongful act or omission occurred. (c) Subsection (a) of this Code section is intended to create a two-year statute of limitations. Subsection (b) of this Code section is intended to create a five-year statute of ultimate repose and abrogation. ***See also* Ga. Code Ann. § 9-3-72 (2011) Limitations for Malpractice Actions: Foreign objects left in body; Ga. Code Ann. § 9-3-73 (2011). Limitations for Malpractice Actions: Certain disabilities and exceptions applicable.** **Ga. Code Ann. § 9-3--33 (2011) Injuries to the person; injuries to reputation; loss of consortium; exception.** Actions for injuries to the person shall be brought within two years after the right of action accrues, except for injuries to the reputation, which shall be brought within one year after the right of action accrues, and except for actions for injuries to the person involving loss of consortium, which shall be brought within four years after the right of action accrues.
Hawaii	**Haw. Rev. Stat. Ann. § 657-7 (2011) Damage to persons or property.** Actions for the recovery of compensation for damage or injury to persons or property shall be instituted within two years after the cause of action accrued, and not after, except as provided in section 657-13. **Haw. Rev. Stat. Ann. § 657-7.3 (2011) Medical torts; limitation of actions; time.** No action for injury or death against a chiropractor, clinical laboratory technologist or technician, dentist, naturopathic physician, nurse, nursing home administrator, dispensing optician, optometrist, osteopath, physician or surgeon, physical therapist, podiatrist, psychologist, or veterinarian duly licensed or registered under the laws of the State, or a licensed hospital as the employer of any such person, based upon such person's alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person's practice, shall be brought more than two years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, but in any event not more than six years after the date of the alleged act or omission causing the injury or death. This six-year time limitation shall be tolled for any period during which the person has failed to disclose any act, error, or omission upon which the action is based and which is known to the person. Actions by a minor shall be commenced within six years from the date of the alleged wrongful act

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	except the actions by a minor under the age of ten years shall be commenced within six years or by the minor's tenth birthday, whichever provides a longer period. Such time limitation shall be tolled for any minor for any period during which the parent, guardian, insurer, or health care provider has committed fraud or gross negligence, or has been a party to a collusion in the failure to bring action on behalf of the injured minor for a medical tort. The time limitation shall also be tolled for any period during which the minor's injury or illness alleged to have arisen, in whole or in part, from the alleged wrongful act or omission could not have been discovered through the use of reasonable diligence.
Idaho	**Idaho Code Ann. § 5-219 (2011) Actions against officers, for penalties, on bonds, and for professional malpractice or for personal injuries.** Within two (2) years: 4. An action to recover damages for professional malpractice, or for an injury to the person, or for the death of one caused by the wrongful act or neglect of another, including any such action arising from breach of an implied warranty or implied covenant; provided, however, when the action is for damages arising out of the placement and inadvertent, accidental or unintentional leaving of any foreign object in the body of any person by reason of the professional malpractice of any hospital, physician or other person or institution practicing any of the healing arts or when the fact of damage has, for the purpose of escaping responsibility therefor, been fraudulently and knowingly concealed from the injured party by an alleged wrongdoer standing at the time of the wrongful act, neglect or breach in a professional or commercial relationship with the injured party, the same shall be deemed to accrue when the injured party knows or in the exercise of reasonable care should have been put on inquiry regarding the condition or matter complained of; but in all other actions, whether arising from professional malpractice or otherwise, the cause of action shall be deemed to have accrued as of the time of the occurrence, act or omission complained of, and the limitation period shall not be extended by reason of any continuing consequences or damages resulting therefrom or any continuing professional or commercial relationship between the injured party and the alleged wrongdoer, and, provided further, that an action within the foregoing foreign object or fraudulent concealment exceptions must be commenced within one (1) year following the date of accrual as aforesaid or two (2) years following the occurrence, act or omission complained of, whichever is later. The term "professional malpractice" as used herein refers to wrongful acts or omissions in the performance of professional services by any person, firm, association, entity or corporation licensed to perform such services under the law of the state of Idaho. This subsection shall not affect the application of section 5-243, Idaho Code, except as to actions arising from professional malpractice. **Idaho Code Ann. § 6-1403 (2011) Length of time product sellers are subject to liability.** (2) Statute of repose. (a) Generally. In claims that involve harm caused more than ten (10) years after time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by clear and convincing evidence. (b) Limitations on statute of repose. 1. If a product seller expressly warrants that its product can be utilized safely for a period longer than ten (10) years, the period of repose, after which the presumption created in subsection (2)(a) hereof arises, shall be extended according to that warranty or promise. 2. The ten (10) year period of repose established in subsection (2)(a) hereof does not apply if the product seller intentionally misrepresents facts about its product, or fraudulently conceals information about it, and that conduct was a substantial cause of the claimant's harm. 3. Nothing contained in subsection (2) of this section shall affect the right of any person found liable under this chapter to seek and obtain contribution or indemnity from any other person who is responsible for harm under this chapter. 4. The ten (10) year period of repose established in subsection (2)(a) hereof shall not apply if the harm was caused by prolonged exposure to a defective product, or if the injury-causing aspect of the product that existed at the time of delivery was not discoverable by an ordinary reasonably prudent person until more than ten (10) years after the time of delivery, or if the harm, caused within ten (10) years after the time of delivery, did not manifest itself until after that time.

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	(3) Statute of limitation. No claim under this chapter may be brought more than two (2) years from the time the cause of action accrued as defined in section 5-219, Idaho Code
Illinois	**735 Ill. Comp. Stat. Ann. 5/13-212 (2011) Personal Actions: Physician or hospital.** (a) Except as provided in Section 13-215 of this Act, no action for damages for injury or death against any physician, dentist, registered nurse or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of such date occurs first, but in no event shall such action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death. (b) Except as provided in Section 13-215 of this Act, no action for damages for injury or death against any physician, dentist, registered nurse or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 8 years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death where the person entitled to bring the action was, at the time the cause of action accrued, under the age of 18 years; provided, however, that in no event may the cause of action be brought after the person's 22nd birthday. If the person was under the age of 18 years when the cause of action accrued and, as a result of this amendatory Act of 1987, the action is either barred or there remains less than 3 years to bring such action, then he or she may bring the action within 3 years of July 20, 1987. (c) If the person entitled to bring an action described in this Section is, at the time the cause of action accrued, under a legal disability other than being under the age of 18 years, then the period of limitations does not begin to run until the disability is removed. **735 Ill. Comp. Stat. Ann. 5/13-213 (2011) Product liability; statute of repose.** (a) As used in this Section, the term: (3) "Product liability action" means any action based on any theory or doctrine brought against the seller of a product on account of personal injury, (including illness, disease, disability and death) or property, economic or other damage allegedly caused by or resulting from the manufacture, construction, preparation, assembly, installation, testing, makeup, characteristics, functions, design, formula, plan, recommendation, specification, prescription, advertising, sale, marketing, packaging, labeling, repair, maintenance or disposal of, or warning or instruction regarding any product. This definition excludes actions brought by State or federal regulatory agencies pursuant to statute. (b) Subject to the provisions of subsections (c) and (d) no product liability action based on the doctrine of strict liability in tort shall be commenced except within the applicable limitations period and, in any event, within 12 years from the date of first sale, lease or delivery of possession by a seller or 10 years from the date of first sale, lease or delivery of possession to its initial user, consumer, or other non-seller, whichever period expires earlier, of any product unit that is claimed to have injured or damaged the plaintiff, unless the defendant expressly has warranted or promised the product for a longer period and the action is brought within that period. (c) No product liability action based on the doctrine of strict liability in tort to recover for injury or damage claimed to have resulted from an alteration, modification or change of the product unit subsequent to the date of first sale, lease or delivery of possession of the product unit to its initial user, consumer or other non-seller shall be limited or barred by subsection (b) hereof if: (1) the action is brought against a seller making, authorizing, or furnishing materials for the accomplishment of such alteration, modification or change (or against a seller furnishing specifications or instructions for the accomplishment of such alteration, modification or change when the injury is claimed to have resulted from failure to provide adequate specifications or instructions), and

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	(2) the action commenced within the applicable limitation period and, in any event, within 10 years from the date such alteration, modification or change was made, unless defendant expressly has warranted or promised the product for a longer period and the action is brought within that period, and (3) when the injury or damage is claimed to have resulted from an alteration, modification or change of a product unit, there is proof that such alteration, modification or change had the effect of introducing into the use of the product unit, by reason of defective materials or workmanship, a hazard not existing prior to such alteration, modification or change. (d) Notwithstanding the provisions of subsection (b) and paragraph (2) of subsection (c) if the injury complained of occurs within any of the periods provided by subsection (b) and paragraph (2) of subsection (c), the plaintiff may bring an action within 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, of the existence of the personal injury, death or property damage, but in no event shall such action be brought more than 8 years after the date on which such personal injury, death or property damage occurred. In any such case, if the person entitled to bring the action was, at the time the personal injury, death or property damage occurred, under the age of 18 years, or under a legal disability, then the period of limitations does not begin to run until the person attains the age of 18 years, or the disability is removed. (e) Replacement of a component part of a product unit with a substitute part having the same formula or design as the original part shall not be deemed a sale, lease or delivery of possession or an alteration, modification or change for the purpose of permitting commencement of a product liability action based on the doctrine of strict liability in tort to recover for injury or damage claimed to have resulted from the formula or design of such product unit or of the substitute part when such action would otherwise be barred according to the provisions of subsection (b) of this Section.
Indiana	**Ind. Code Ann. § 34-18-7-1 (2011) Medical Malpractice: Limitations.** (a) This section applies to all persons regardless of minority or other legal disability, except as provided in subsection (c). (b) A claim, whether in contract or tort, may not be brought against a health care provider based upon professional services or health care that was provided or that should have been provided unless the claim is filed within two (2) years after the date of the alleged act, omission, or neglect, except that a minor less than six (6) years of age has until the minor's eighth birthday to file. (c) If a patient meets the criteria stated in IC 34-18-8-6(c), the applicable limitations period is equal to the period that would otherwise apply to the patient under subsection (b) (or IC 27-12-7-1(b) before its repeal) plus one hundred eighty (180) days. **Ind. Code Ann. § 34-20-3-1 (2011) General statute of limitations.** (a) This section applies to all persons regardless of minority or legal disability. Notwithstanding IC 34-11-6-1, this section applies in any product liability action in which the theory of liability is negligence or strict liability in tort. (b) Except as provided in section 2 [IC 34-20-3-2] of this chapter, a product liability action must be commenced: (1) within two (2) years after the cause of action accrues; or (2) within ten (10) years after the delivery of the product to the initial user or consumer. However, if the cause of action accrues at least eight (8) years but less than ten (10) years after that initial delivery, the action may be commenced at any time within two (2) years after the cause of action accrues.
Iowa	**Iowa Code Ann. § 614.1 (2010) Limitations of Actions: Period.** Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared: 9. Malpractice.

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	a. Except as provided in paragraph "b", those founded on injuries to the person or wrongful death against any physician and surgeon, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, physician assistant, or nurse, licensed under chapter 147, or a hospital licensed under chapter 135B, arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first, but in no event shall any action be brought more than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death. b. An action subject to paragraph "a" and brought on behalf of a minor who was under the age of eight years when the act, omission, or occurrence alleged in the action occurred shall be commenced no later than the minor's tenth birthday or as provided in paragraph "a", whichever is later. **Iowa Code Ann. § 614.1 (2010) Limitations of Actions: Period.** Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared: 2A. With respect to products. a. Those founded on the death of a person or injuries to the person or property brought against the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of a product based upon an alleged defect in the design, inspection, testing, manufacturing, formulation, marketing, packaging, warning, labeling of the product, or any other alleged defect or failure of whatever nature or kind, based on the theories of strict liability in tort, negligence, or breach of an implied warranty shall not be commenced more than fifteen years after the product was first purchased, leased, bailed, or installed for use or consumption unless expressly warranted for a longer period of time by the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product. This subsection shall not affect the time during which a person found liable may seek and obtain contribution or indemnity from another person whose actual fault caused a product to be defective. This subsection shall not apply if the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product intentionally misrepresents facts about the product or fraudulently conceals information about the product and that conduct was a substantial cause of the claimant's harm. b. (1) The fifteen-year limitation in paragraph "a" shall not apply to the time period in which to discover a disease that is latent and caused by exposure to a harmful material, in which event the cause of action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause. This subsection shall not apply to cases governed by subsection 11 of this section. (2) As used in this paragraph, "harmful material" means silicone gel breast implants, which were implanted prior to July 12, 1992; and chemical substances commonly known as asbestos, dioxins, tobacco, or polychlorinated biphenyls, whether alone or as part of any product; or any substance which is determined to present an unreasonable risk of injury to health or the environment by the United States environmental protection agency pursuant to the federal Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., or by this state, if that risk is regulated by the United States environmental protection agency or this state.

State	Statute of Limitation
Kansas	**Kan. Stat. Ann. § 60-513 (2009) Personal Actions and General Provisions: Actions limited to two years.** (a) The following actions shall be brought within two years: (5) An action for wrongful death. (7) An action arising out of the rendering of or failure to render professional services by a health care provider, not arising on contract. (b) Except as provided in subsections (c) and (d), the causes of action listed in subsection (a) shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall an action be commenced more than 10 years beyond the time of the act giving rise to the cause of action. (c) A cause of action arising out of the rendering of or the failure to render professional services by a health care provider shall be deemed to have accrued at the time of the occurrence of the act giving rise to the cause of action, unless the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall such an action be commenced more than four years beyond the time of the act giving rise to the cause of action. **Kan. Stat. Ann. § 60-3303 (2009) Useful safe life ten-year period of repose; evidence; latent disease exception; reviving certain causes of action.** (a)(2) A product seller may be subject to liability for harm caused by a product used beyond its useful safe life to the extent that the product seller has expressly warranted the product for a longer period. (b) (1) In claims that involve harm caused more than 10 years after time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by clear and convincing evidence. (2) (A) If a product seller expressly warrants that its product can be utilized safely for a period longer than 10 years, the period of repose, after which the presumption created in paragraph (1) of this subsection arises, shall be extended according to that warranty or promise. (B) The ten-year period of repose established in paragraph (1) of this subsection does not apply if the product seller intentionally misrepresents facts about its product, or fraudulently conceals information about it, and that conduct was a substantial cause of the claimant's harm. (C) Nothing contained in this subsection shall affect the right of any person liable under a product liability claim to seek and obtain indemnity from any other person who is responsible for the harm which gave rise to the product liability claim. (D) The ten-year period of repose established in paragraph (1) of this subsection shall not apply if the harm was caused by prolonged exposure to a defective product, or if the injury-causing aspect of the product that existed at the time of delivery was not discoverable by a reasonably prudent person until more than 10 years after the time of delivery, or if the harm caused within 10 years after the time of delivery, did not manifest itself until after that time. (c) Except as provided in subsections (d) and (e), nothing contained in subsections (a) and (b) above shall modify the application of K.S.A. 60-513, and amendments thereto (d) (1) In a product liability claim against the product seller, the ten-year limitation, as defined in K.S.A. 60-513, and amendments thereto, shall not apply to the time to discover a disease which is latent caused by exposure to a harmful material, in which event the action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause.

State	Statute of Limitation
Kentucky	**Ky. Rev. Stat. Ann. § 413.140 (2010) Actions Other Than Those Relating to Real Property: Actions to be brought within one (1) year.** (1) The following actions shall be commenced within one (1) year after the cause of action accrued: (e) An action against a physician, surgeon, dentist, or hospital licensed pursuant to KRS Chapter 216, for negligence or malpractice; (f) A civil action, arising out of any act or omission in rendering, or failing to render, professional services for others, whether brought in tort or contract, against a real estate appraiser holding a certificate or license issued under KRS Chapter 324A; 2) In respect to the action referred to in paragraph (e) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered; provided that such action shall be commenced within five (5) years from the date on which the alleged negligent act or omission is said to have occurred. (3) In respect to the action referred to in paragraph (f) of subsection (1) of this section, the cause of action shall be deemed to accrue within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured. **Ky. Rev. Stat. Ann. § 413.140 (2010) Actions Other Than Those Relating to Real Property: Actions to be brought within one (1) year.** (1) The following actions shall be commenced within one (1) year after the cause of action accrued: (a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice, or servant.
Louisiana	**La. Rev. Stat. Ann. § 9:5628 (2011) Actions for medical malpractice.** A. No action for damages for injury or death against any physician, chiropractor, nurse, licensed midwife practitioner, dentist, psychologist, optometrist, hospital or nursing home duly licensed under the laws of this state, or community blood center or tissue bank as defined in R.S. 40:1299.41(A), whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought unless filed within one year from the date of the alleged act, omission, or neglect, or within one year from the date of discovery of the alleged act, omission, or neglect; however, even as to claims filed within one year from the date of such discovery, in all events such claims shall be filed at the latest within a period of three years from the date of the alleged act, omission, or neglect. B. The provisions of this Section shall apply to all persons whether or not infirm or under disability of any kind and including minors and interdicts. C. The provisions of this Section shall apply to all healthcare providers listed herein or defined in R.S. 40:1299.41 regardless of whether the healthcare provider avails itself of the protections and provisions of R.S. 40:1299.41 et seq., by fulfilling the requirements necessary to qualify as listed in R.S. 40:1299.42 and 1299.44. **La. C.C. Art. 3492 (2011) Delictual actions.** Delictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or damage is sustained. It does not run against minors or interdicts in actions involving permanent disability and brought pursuant to the Louisiana Products Liability Act or state law governing product liability actions in effect at the time of the injury or damage.

State	Statute of Limitation
Maine	**Me. Rev. Stat. tit. 24, § 2902 (2011) Statute of limitations for health care providers and health care practitioners.** Actions for professional negligence shall be commenced within 3 years after the cause of action accrues. For the purposes of this section, a cause of action accrues on the date of the act or omission giving rise to the injury. Notwithstanding the provisions of Title 14, section 853, relating to minority, actions for professional negligence by a minor shall be commenced within 6 years after the cause of action accrues or within 3 years after the minor reaches the age of majority, whichever first occurs. This section does not apply where the cause of action is based upon the leaving of a foreign object in the body, in which case the cause of action shall accrue when the plaintiff discovers or reasonably should have discovered the harm. For the purposes of this section, the term "foreign object" does not include a chemical compound, prosthetic aid or object intentionally implanted or permitted to remain in the patient's body as a part of the health care or professional services. If the provision in this section reducing the time allowed for a minor to bring a claim is found to be void or otherwise invalidated by a court of proper jurisdiction, then the statute of limitations for professional negligence shall be 2 years after the cause of action accrues, except that no claim brought under the 3-year statute may be extinguished by the operation of this paragraph. **Me. Rev. Stat. tit. 14, § 752 (2011) Limitations of Actions: Six years.** All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards, except actions on a judgment or decree of any court of record of the United States, or of any state, or of a justice of the peace in this State, and except as otherwise specially provided.
Maryland	**Md. Code Ann., Cts. & Jud. Proc. § 5-109 (2011) Actions against health care providers.** (a) Limitations.—An action for damages for an injury arising out of the rendering of or failure to render professional services by a health care provider, as defined in § 3-2A-01 of this article, shall be filed within the earlier of: (1) Five years of the time the injury was committed; or (2) Three years of the date the injury was discovered. (b) Actions by claimants under age 11.—Except as provided in subsection (c) of this section, if the claimant was under the age of 11 years at the time the injury was committed, the time limitations prescribed in subsection (a) of this section shall commence when the claimant reaches the age of 11 years. (c) Exceptions to age limitations in certain actions.— (1) The provisions of subsection (b) of this section may not be applied to an action for damages for an injury: (i) To the reproductive system of the claimant; or (ii) Caused by a foreign object negligently left in the claimant's body. (2) In an action for damages for an injury described in this subsection, if the claimant was under the age of 16 years at the time the injury was committed, the time limitations prescribed in subsection (a) of this section shall commence when the claimant reaches the age of 16 years. **Md. Code Ann., Cts. & Jud. Proc. § 5-101 (2011) Three-year limitation in general** A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.

State	Statute of Limitation
Massachusetts	**Mass. Ann. Laws, ch. 260, § 4 (2010) Limitation of Three Years; Limitation of One Year for Certain Action.** Actions of contract or tort for malpractice, error or mistake against physicians, surgeons, dentists, optometrists, hospitals and sanitoria shall be commenced only within three years after the cause of action accrues, but in no event shall any such action be commenced more than seven years after occurrence of the act or omission which is the alleged cause of the injury upon which such action is based except where the action is based upon the leaving of a foreign object in the body. **Mass. Ann. Laws, ch. 231, § 60D (2010) Limitation of Actions by Minors.** Notwithstanding the provisions of section seven of chapter two hundred and sixty, any claim by a minor against a health care provider stemming from professional services or health care rendered, whether in contract or tort, based on an alleged act, omission or neglect shall be commenced within three years from the date the cause of action accrues, except that a minor under the full age of six years shall have until his ninth birthday in which the action may be commenced, but in no event shall any such action be commenced more than seven years after occurrence of the act or omission which is the alleged cause of the injury upon which such action is based except where the action is based upon the leaving of a foreign object in the body. **Mass. Ann. Laws, ch. 260, § 2A (2010) Limitation of Three Years in Certain Cases.** Except as otherwise provided, actions of tort, actions of contract to recover for personal injuries, and actions of replevin, shall be commenced only within three years next after the cause of action accrues.
Michigan	**Mich. Comp. Laws. Serv. § 600.5838a (2011) Claim based on medical malpractice; accrual; definitions; commencement of action; burden of proof; applicability of subsection (2); limitations.** (1) For purposes of this act, a claim based on the medical malpractice of a person or entity who is or who holds himself or herself out to be a licensed health care professional, licensed health facility or agency, or an employee or agent of a licensed health facility or agency who is engaging in or otherwise assisting in medical care and treatment, whether or not the licensed health care professional, licensed health facility or agency, or their employee or agent is engaged in the practice of the health profession in a sole proprietorship, partnership, professional corporation, or other business entity, accrues at the time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim. (2) Except as otherwise provided in this subsection, an action involving a claim based on medical malpractice may be commenced at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. However, except as otherwise provided in section 5851(7) or (8), the claim shall not be commenced later than 6 years after the date of the act or omission that is the basis for the claim. The burden of proving that the plaintiff, as a result of physical discomfort, appearance, condition, or otherwise, neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim is on the plaintiff. A medical malpractice action that is not commenced within the time prescribed by this subsection is barred. This subsection does not apply, and the plaintiff is subject to the period of limitations set forth in subsection (3), under 1 of the following circumstances: (a) If discovery of the existence of the claim was prevented by the fraudulent conduct of the health care professional against whom the claim is made or a named employee or agent of the health professional against whom the claim is made, or of the health facility against whom the claim is made or a named employee or agent of a health facility against whom the claim is made. (b) There has been permanent loss of or damage to a reproductive organ resulting in the inability to procreate. (3) An action involving a claim based on medical malpractice under circumstances described in subsection (2)(a) or (b) may be commenced at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. The burden of proving that the plaintiff, as a result of physical discomfort, appearance, condition or otherwise, neither discovered

State	Statute of Limitation
	nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim is on the plaintiff. A medical malpractice action that is not commenced within the time prescribed by this subsection is barred. ***See also* Mich. Comp. Laws. Serv. § 600.5851 (2011) Disabilities of infancy or insanity; tacking of successive disabilities prohibited; year of grace; removing disability of infancy; claim alleging medical malpractice accruing to person 8 years old or less or 13 years old or less.** **Mich. Comp. Laws. Serv. § 600.5805 (2011) Injuries to persons or property; limitations.** (1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section. (10) The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property. (13) The period of limitations is 3 years for a products liability action. However, in the case of a product that has been in use for not less than 10 years, the plaintiff, in proving a prima facie case, shall be required to do so without benefit of any presumption.
Minnesota	**Minn. Stat. Ann. § 541.076 (2010) Health Care Provider Actions.** (a) For purposes of this section, "health care provider" means a physician, surgeon, dentist, occupational therapist, other health care professionals as defined in section 145.61, hospital, or treatment facility. (b) An action by a patient or former patient against a health care provider alleging malpractice, error, mistake, or failure to cure, whether based on a contract or tort, must be commenced within four years from the date the cause of action accrued. ***See also* Minn. Stat. Ann. § 541.15 (2010) Periods Of Disability Not Counted.** **Minn. Stat. Ann. § 541.05 (2010) Various Cases, Six Years.** Subd. 2. Strict liability. Unless otherwise provided by law, any action based on the strict liability of the defendant and arising from the manufacture, sale, use or consumption of a product shall be commenced within four years. **Minn. Stat. Ann. § 541.07 (2010) Two- Or Three-Year Limitations.** Except where the Uniform Commercial Code, this section, section 541.05, 541.073, 541.076, or 604.205 otherwise prescribes, the following actions shall be commenced within two years: (1) for libel, slander, assault, battery, false imprisonment, or other tort resulting in personal injury, and all actions against veterinarians as defined in chapter 156, for malpractice, error, mistake, or failure to cure, whether based on contract or tort; provided a counterclaim may be pleaded as a defense to any action for services brought by a veterinarian after the limitations period if it was the property of the party pleading it at the time it became barred and was not barred at the time the claim sued on originated, but no judgment thereof except for costs can be rendered in favor of the party so pleading it.

State	Statute of Limitation
Mississippi	**Miss. Code Ann. § 15-1-36 (2010) Limitations applicable to malpractice action arising from medical, surgical or other professional services.** (2) For any claim accruing on or after July 1, 1998, and except as otherwise provided in this section, no claim in tort may be brought against a licensed physician, osteopath, dentist, hospital, institution for the aged or infirm, nurse, pharmacist, podiatrist, optometrist or chiropractor for injuries or wrongful death arising out of the course of medical, surgical or other professional services unless it is filed within two (2) years from the date the alleged act, omission or neglect shall or with reasonable diligence might have been first known or discovered, and, except as described in paragraphs (a) and (b) of this subsection, in no event more than seven (7) years after the alleged act, omission or neglect occurred: (a) In the event a foreign object introduced during a surgical or medical procedure has been left in a patient's body, the cause of action shall be deemed to have first accrued at, and not before, the time at which the foreign object is, or with reasonable diligence should have been, first known or discovered to be in the patient's body. (b) In the event the cause of action shall have been fraudulently concealed from the knowledge of the person entitled thereto, the cause of action shall be deemed to have first accrued at, and not before, the time at which such fraud shall be, or with reasonable diligence should have been, first known or discovered. (3) Except as otherwise provided in subsection (4) of this section, if at the time at which the cause of action shall or with reasonable diligence might have been first known or discovered, the person to whom such claim has accrued shall be six (6) years of age or younger, then such minor or the person claiming through such minor may, notwithstanding that the period of time limited pursuant to subsections (1) and (2) of this section shall have expired, commence action on such claim at any time within two (2) years next after the time at which the minor shall have reached his sixth birthday, or shall have died, whichever shall have first occurred. (4) If at the time at which the cause of action shall or with reasonable diligence might have been first known or discovered, the person to whom such claim has accrued shall be a minor without a parent or legal guardian, then such minor or the person claiming through such minor may, notwithstanding that the period of time limited pursuant to subsections (1) and (2) of this section shall have expired, commence action on such claim at any time within two (2) years next after the time at which the minor shall have a parent or legal guardian or shall have died, whichever shall have first occurred; provided, however, that in no event shall the period of limitation begin to run prior to such minor's sixth birthday unless such minor shall have died. (5) If at the time at which the cause of action shall or with reasonable diligence might have been first known or discovered, the person to whom such claim has accrued shall be under the disability of unsoundness of mind, then such person or the person claiming through him may, notwithstanding that the period of time hereinbefore limited shall have expired, commence action on such claim at any time within two (2) years next after the time at which the person to whom the right shall have first accrued shall have ceased to be under the disability, or shall have died, whichever shall have first occurred. (6) When any person who shall be under the disabilities mentioned in subsections (3), (4) and (5) of this section at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability, no time shall be allowed by reason of the disability of such person to commence action on the claim of such person beyond the period prescribed under Section 15-1-55, Mississippi Code of 1972. (7) For the purposes of subsection (3) of this section, and only for the purposes of such subsection, the disability of infancy or minority shall be removed from and after a person has reached his sixth birthday. (8) For the purposes of subsection (4) of this section, and only for the purposes of such subsection, the disability of infancy or minority shall be removed from and after a person has

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	reached his sixth birthday or from and after such person shall have a parent or legal guardian, whichever occurs later, unless such disability is otherwise removed by law. **Miss. Code Ann. § 15-1-49 (2010) Limitations applicable to actions not otherwise specifically provided for.** (1) All actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after. (2) In actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury. (3) The provisions of subsection (2) of this section shall apply to all pending and subsequently filed actions.
Missouri	**Mo. Rev. Stat. § 516.105 (2011) Actions against health care providers (medical malpractice).** All actions against physicians, hospitals, dentists, registered or licensed practical nurses, optometrists, podiatrists, pharmacists, chiropractors, professional physical therapists, and any other entity providing health care services and all employees of any of the foregoing acting in the course and scope of their employment, for damages for malpractice, negligence, error or mistake related to health care shall be brought within two years from the date of occurrence of the act of neglect complained of, except that: (1) In cases in which the act of neglect complained of is introducing and negligently permitting any foreign object to remain within the body of a living person, the action shall be brought within two years from the date of the discovery of such alleged negligence, or from the date on which the patient in the exercise of ordinary care should have discovered such alleged negligence, whichever date first occurs; and (2) In cases in which the act of neglect complained of is the negligent failure to inform the patient of the results of medical tests, the action for failure to inform shall be brought within two years from the date of the discovery of such alleged negligent failure to inform, or from the date on which the patient in the exercise of ordinary care should have discovered such alleged negligent failure to inform, whichever date first occurs; except that, no such action shall be brought for any negligent failure to inform about the results of medical tests performed more than two years before August 28, 1999. For purposes of this subdivision, the act of neglect based on the negligent failure to inform the patient of the results of medical tests shall not include the act of informing the patient of the results of negligently performed medical tests or the act of informing the patient of erroneous test results; and (3) In cases in which the person bringing the action is a minor less than eighteen years of age, such minor shall have until his or her twentieth birthday to bring such action. In no event shall any action for damages for malpractice, error, or mistake be commenced after the expiration of ten years from the date of the act of neglect complained of or for two years from a minor's eighteenth birthday, whichever is later. **Mo. Rev. Stat. § 516.120 (2011) What actions within five years.** Within five years: (4) An action **** for any other injury to the person or rights of another, not arising on contract and not herein otherwise enumerated.

State	Statute of Limitation
Montana	**Mont. Code Ann. § 27-2-205 (2010) Actions for medical malpractice.** (1) Action in tort or contract for injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, based upon alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, must, except as provided in subsection (2), be commenced within 3 years after the date of injury or within 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may an action be commenced after 5 years from the date of injury. However, this time limitation is tolled for any period during which there has been a failure to disclose any act, error, or omission upon which an action is based and that is known to the defendant or through the use of reasonable diligence subsequent to the act, error, or omission would have been known to the defendant. (2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the date of the minor's injury, the period of limitations in subsection (1) begins to run when the minor reaches the minor's eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian. **Mont. Code Ann. § 27-2-204 (2010) Tort actions—general and personal injury.** (1) Except as provided in 27-2-216 and 27-2-217, the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years. (2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years, except when the wrongful death is the result of a homicide, in which case the period is within 10 years.
Nebraska	**Neb. Rev. Stat. Ann. § 44-2828 (2010) Nebraska Hospital-Medical Liability Act: Action to recover damages; limitation of action.** Except as provided in section 25-213, any action to recover damages based on alleged malpractice or professional negligence or upon alleged breach of warranty in rendering or failing to render professional services shall be commenced within two years next after the alleged act or omission in rendering or failing to render professional services providing the basis for such action, except that if the cause of action is not discovered and could not be reasonably discovered within such two-year period, the action may be commenced within one year from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. In no event may any action be commenced to recover damages for malpractice or professional negligence or breach of warranty in rendering or failing to render professional services more than ten years after the date of rendering or failing to render such professional service which provides the basis for the cause of action. **Neb. Rev. Stat. Ann. § 25-222 (2010) Actions on professional negligence.** Any action to recover damages based on alleged professional negligence or upon alleged breach of warranty in rendering or failure to render professional services shall be commenced within two years next after the alleged act or omission in rendering or failure to render professional services providing the basis for such action; Provided, if the cause of action is not discovered and could not be reasonably discovered within such two-year period, then the action may be commenced within one year from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier; and provided further, that in no event may any action be commenced to recover damages for professional negligence or breach of warranty in rendering or failure to render professional services more than ten years after the date of rendering or failure to render such professional service which provides the basis for the cause of action. **Neb. Rev. Stat. Ann. § 25-224 (2010) Actions on product liability.** (1) All product liability actions, except one governed by subsection (5) of this section, shall be commenced within four years next after the date on which the death, injury, or damage complained of occurs.

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	(2) (a) Notwithstanding subsection (1) of this section or any other statutory provision to the contrary, any product liability action, except one governed by section 2-725, Uniform Commercial Code or by subsection (5) of this section, shall be commenced as follows: (i) For products manufactured in Nebraska, within ten years after the date the product which allegedly caused the personal injury, death, or damage was first sold or leased for use or consumption; or (ii) For products manufactured outside Nebraska, within the time allowed by the applicable statute of repose, if any, of the state or country where the product was manufactured, but in no event less than ten years. If the state or country where the product was manufactured does not have an applicable statute of repose, then the only limitation upon the commencement of an action for product liability shall be as set forth in subsection (1) of this section. (b) If the changes made to this subsection by Laws 2001, LB 489, are declared invalid or unconstitutional, this subsection as it existed prior to September 1, 2001, shall be deemed in full force and effect and shall apply to all claims in which a final order has not been entered.
Nevada	**Nev. Rev. Stat. Ann. § 41A.097 (2010) Action for Medical or Dental *See also* Malpractice: Limitation of actions; tolling of limitation.** 1. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for: (a) Injury to or the wrongful death of a person occurring before October 1, 2002, based upon alleged professional negligence of the provider of health care; (b) Injury to or the wrongful death of a person occurring before October 1, 2002, from professional services rendered without consent; or (c) Injury to or the wrongful death of a person occurring before October 1, 2002, from error or omission in practice by the provider of health care. 2. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for: (a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care; (b) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from professional services rendered without consent; or (c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care. 3. This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care. 4. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1 or 2. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of the child's disability, except that in the case of: (a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age. (b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury. **Nev. Rev. Stat. Ann. § 11.190 (2010) Periods of limitation.** Except as otherwise provided in NRS 125B.050; and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as

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	follows: 4. Within 2 years: (e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951. **Nev. Rev. Stat. Ann. § 11.220 (2010) Action for relief not otherwise provided for.** An action for relief, not hereinbefore provided for, must be commenced within 4 years after the cause of action shall have accrued.
New Hampshire	**N.H. Rev. Stat Ann. § 507-C:4 (2011) Actions for Medical Injury: Statute of Limitations.** Notwithstanding any other provision of law, all actions for medical injury shall be commenced within 2 years of the act, omission or failure complained of, except that where the action is based upon discovery of a foreign object in the body of the injured person which is not discovered and could not reasonably have been discovered within such 2-year period, the action may be commenced within 2 years of the date of discovery or of the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. This section applies to all persons regardless of minority or other legal disability, except that a minor under the age of 8 years at the time of the act, omission or failure complained of shall in any event have until his tenth birthday in which to commence an action. **N.H. Rev. Stat Ann. § 507-D:2 (2011) Limitation of Product Liability Actions.** Notwithstanding any other provision of law, all product liability actions must be commenced within the following time limits and not otherwise: I. Within 3 years of the time the injury is, or should, in the exercise of reasonable diligence, have been discovered by the plaintiff; and II. (a) No later than 12 years after the manufacturer of the final product parted with its possession and control or sold it, whichever occurred last; or (b) Where the defendant is a lessor, bailor or licensor of a product who is under a legal duty to inspect, maintain, repair, modify, alter or improve the product in question, no later than 12 years after the time at which the defendant ceases to have the use, possession or control of the product or ceases to be under the legal duty to inspect, maintain, repair, modify or improve it; or (c) Where the plaintiff's action is based upon a legal duty imposed by any governmental regulatory agency to alter, repair, recall, inspect or issue warnings or instructions about the product or otherwise to take any action or precaution for the benefit of the injured party, which legal duty arose after the defendant parted with possession and control of the product or sold the product, whichever came last, no longer than 6 years after the defendant first incurred the legal duty. This subparagraph does not shorten the time period established in subparagraphs (a) and (b) of this paragraph. III. Where the action is brought to recover indemnity or contribution for damages paid to or claimed by another, the action must be commenced within the same period established in RSA 507-D:2, I and II, plus 90 days. IV. The limitation periods established in RSA 507-D:2, I, II and III do not apply to actions based on the defendant's fraudulent misrepresentation, concealment or nondisclosure, or to any actions based upon a written contractual obligation which provides for a different period of limitation, or to actions brought under RSA 382-A:2-313, 2-314 or 2-315 which do not seek damages for or on account of injury to person or property.
New Jersey	**N.J. Rev. Stat. 2A:14-2 (2011) Actions for injury caused by wrongful act.** a. Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years next after the cause of any such action shall have accrued; except that an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth shall be commenced prior to the minor's 13th birthday.

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New Mexico	**N.M. Stat. Ann. § 41-5-13 (2010) Limitations.** No claim for malpractice arising out of an act of malpractice which occurred subsequent to the effective date of the Medical Malpractice Act may be brought against a health care provider unless filed within three years after the date that the act of malpractice occurred except that a minor under the full age of six years shall have until his ninth birthday in which to file. This subsection [section] applies to all persons regardless of minority or other legal disability. **N.M. Stat. Ann. § 37-1-8 (2010) Actions against sureties on fiduciary bonds; injuries to person or reputation.** Actions **** for an injury to the person or reputation of any person, within three years.
New York	**N.Y. C.P.L.R. § 214-a (2011) Action for medical, dental or podiatric malpractice to be commenced within two years and six months; exceptions.** An action for medical, dental or podiatric malpractice must be commenced within two years and six months of the act, omission or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the said act, omission or failure; provided, however, that where the action is based upon the discovery of a foreign object in the body of the patient, the action may be commenced within one year of the date of such discovery or of the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. For the purpose of this section the term "continuous treatment" shall not include examinations undertaken at the request of the patient for the sole purpose of ascertaining the state of the patient's condition. For the purpose of this section the term "foreign object" shall not include a chemical compound, fixation device or prosthetic aid or device. ***See also* N.Y. C.P.L.R. § 208 (2011) Limitations of Time: Infancy, insanity.** **N.Y. C.P.L.R. § 214 (2011) Actions to be commenced within three years: for non-payment of money collected on execution; for penalty created by statute; to recover chattel; for injury to property; for personal injury; for malpractice other than medical, dental or podiatric malpractice; to annul a marriage on the ground of fraud.** The following actions must be commenced within three years: 5. an action to recover damages for a personal injury except as provided in sections 214-b, 214-c and 215; 6. an action to recover damages for malpractice, other than medical, dental or podiatric malpractice, regardless of whether the underlying theory is based in contract or tort. **N.Y. C.P.L.R. § 214-c (2011) Certain actions to be commenced within three years of discovery.** 1. In this section: "exposure" means direct or indirect exposure by absorption, contact, ingestion, inhalation, implantation or injection. 2. Notwithstanding the provisions of section 214, the three year period within which an action to recover damages for personal injury or injury to property caused by the latent effects of exposure to any substance or combination of substances, in any form, upon or within the body or upon or within property must be commenced shall be computed from the date of discovery of the injury by the plaintiff or from the date when through the exercise of reasonable diligence such injury should have been discovered by the plaintiff, whichever is earlier. 4. Notwithstanding the provisions of subdivisions two and three of this section, where the discovery of the cause of the injury is alleged to have occurred less than five years after discovery of the injury or when with reasonable diligence such injury should have been discovered, whichever is earlier, an action may be commenced or a claim filed within one year of such discovery of the cause of the injury; provided, however, if any such action is commenced or claim filed after the period in which it would otherwise have been authorized pursuant to subdivision two or three of this section the plaintiff or claimant shall be required to allege and prove that technical, scientific or medical knowledge and information sufficient to ascertain the cause of his injury had not been discovered, identified or determined prior to the expiration of the period within which the action or claim would have been authorized and that he has otherwise satisfied

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	the requirements of subdivisions two and three of this section. 5. This section shall not be applicable to any action for medical or dental malpractice.
North Carolina	**N.C. Gen. Stat. § 1-15 (2010) Statute runs from accrual of action.** (a) Civil actions can only be commenced within the periods prescribed in this Chapter, after the cause of action has accrued, except where in special cases a different limitation is prescribed by statute. (c) Except where otherwise provided by statute, a cause of action for malpractice arising out of the performance of or failure to perform professional services shall be deemed to accrue at the time of the occurrence of the last act of the defendant giving rise to the cause of action: Provided that whenever there is bodily injury to the person, economic or monetary loss, or a defect in or damage to property which originates under circumstances making the injury, loss, defect or damage not readily apparent to the claimant at the time of its origin, and the injury, loss, defect or damage is discovered or should reasonably be discovered by the claimant two or more years after the occurrence of the last act of the defendant giving rise to the cause of action, suit must be commenced within one year from the date discovery is made: Provided nothing herein shall be construed to reduce the statute of limitation in any such case below three years. Provided further, that in no event shall an action be commenced more than four years from the last act of the defendant giving rise to the cause of action: Provided further, that where damages are sought by reason of a foreign object, which has no therapeutic or diagnostic purpose or effect, having been left in the body, a person seeking damages for malpractice may commence an action therefor within one year after discovery thereof as hereinabove provided, but in no event may the action be commenced more than 10 years from the last act of the defendant giving rise to the cause of action. **N.C. Gen. Stat. § 1-52 (2010) Three years.** Within three years an action— (16) Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action. **N.C. Gen. Stat. § 1-17 (2010) Limitations: Disabilities.** (b) Notwithstanding the provisions of subsection (a) of this section, an action on behalf of a minor for malpractice arising out of the performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except that if those time limitations expire before the minor attains the full age of 19 years, the action may be brought before the minor attains the full age of 19 years. **N.C. Gen. Stat. § 1-46.1 (2010) Twelve years.** Within 12 years an action— (1) No action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than 12 years after the date of initial purchase for use or consumption. **N.C. Gen. Stat. § 1-53 (2010) Two years.** Within two years— (4) Actions for damages on account of the death of a person caused by the wrongful act, neglect or fault of another under G.S. 28A-18-2; the cause of action shall not accrue until the date of death. Provided that, whenever the decedent would have been barred, had he lived, from bringing an action for bodily harm because of the provisions of G.S. 1-15(c) or 1-52(16), no action for his death may be brought.

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North Dakota	**N.D. Cent. Code § 28-01-16 (2011) Actions having six-year limitations.** The following actions must be commenced within six years after the claim for relief has accrued: 5. An action for criminal conversation or for any other injury to the person or rights of another not arising upon contract, when not otherwise expressly provided. **N.D. Cent. Code § 28-01-18 (2011) Actions having two-year limitations.** The following actions must be commenced within two years after the claim for relief has accrued: 3. An action for the recovery of damages resulting from malpractice; provided, however, that the limitation of an action against a physician or licensed hospital will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or licensed hospital. This limitation is subject to the provisions of section 28-01-25. 4. An action for injuries done to the person of another, when death ensues from such injuries, and the claim for relief must be deemed to have accrued at the time of the death of the party injured; provided, however, that when death ensues as the result of malpractice, the claim for relief is deemed to have accrued at the time of the discovery of the malpractice. However, the limitation will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or hospital. **N.D. Cent. Code § 28-01-25 (2011) Disabilities extend limitations on actions generally—Exceptions.** In cases alleging professional malpractice, the extension of the limitation due to infancy is limited to twelve years. **N.D. Cent. Code § 28-01.3-08 (2011) Statute of limitation and repose.** 1. Except as provided in subsections 4 and 5, there may be no recovery of damages in a products liability action unless the injury, death, or property damage occurs within ten years of the date of initial purchase for use or consumption, or within eleven years of the date of manufacture of a product. 2. This section applies to all persons, regardless of minority or other legal disability. 3. If a manufacturer, wholesaler, or retailer issues a recall of a product in any state or becomes aware of any defect in a product at any time and fails to take reasonable steps to warn users of the product defect, the provisions of subsection 1 do not bar a products liability action against the manufacturer or seller by a user of the product who is subsequently injured or damaged as a result of the defect.
Ohio	**Ohio Rev. Code Ann. § 2305.113 (2011) Limitation of actions for medical malpractice; statute of repose.** (A) Except as otherwise provided in this section, an action upon a medical, dental, optometric, or chiropractic claim shall be commenced within one year after the cause of action accrued. (B) (1) If prior to the expiration of the one-year period specified in division (A) of this section, a claimant who allegedly possesses a medical, dental, optometric, or chiropractic claim gives to the person who is the subject of that claim written notice that the claimant is considering bringing an action upon that claim, that action may be commenced against the person notified at any time within one hundred eighty days after the notice is so given. (2) An insurance company shall not consider the existence or nonexistence of a written notice described in division (B)(1) of this section in setting the liability insurance premium rates that the company may charge the company's insured person who is notified by that written notice. (C) Except as to persons within the age of minority or of unsound mind as provided by section 2305.16 of the Revised Code, and except as provided in division (D) of this section, both of the following apply: (1) No action upon a medical, dental, optometric, or chiropractic claim shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim.

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	(2) If an action upon a medical, dental, optometric, or chiropractic claim is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim, then, any action upon that claim is barred. (D) (1) If a person making a medical claim, dental claim, optometric claim, or chiropractic claim, in the exercise of reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within three years after the occurrence of the act or omission, but, in the exercise of reasonable care and diligence, discovers the injury resulting from that act or omission before the expiration of the four-year period specified in division (C)(1) of this section, the person may commence an action upon the claim not later than one year after the person discovers the injury resulting from that act or omission. (2) If the alleged basis of a medical claim, dental claim, optometric claim, or chiropractic claim is the occurrence of an act or omission that involves a foreign object that is left in the body of the person making the claim, the person may commence an action upon the claim not later than one year after the person discovered the foreign object or not later than one year after the person, with reasonable care and diligence, should have discovered the foreign object. **Ohio Rev. Code Ann. § 2305.10 (2011) Product liability claims and actions for bodily injury or injuring personal property; childhood sexual abuse.** (A) Except as provided in division (C) or (E) of this section, an action based on a product liability claim and an action for bodily injury or injuring personal property shall be brought within two years after the cause of action accrues. Except as provided in divisions (B)(1), (2), (3), (4), and (5) of this section, a cause of action accrues under this division when the injury or loss to person or property occurs. (B) (1) For purposes of division (A) of this section, a cause of action for bodily injury that is not described in division (B)(2), (3), (4), or (5) of this section and that is caused by exposure to hazardous or toxic chemicals, ethical drugs, or ethical medical devices accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first. **** (C) (1) Except as otherwise provided in divisions (C)(2), (3), (4), (5), (6), and (7) of this section or in section 2305.19 of the Revised Code, no cause of action based on a product liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or first lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product. (2) Division (C)(1) of this section does not apply if the manufacturer or supplier of a product engaged in fraud in regard to information about the product and the fraud contributed to the harm that is alleged in a product liability claim involving that product. (3) Division (C)(1) of this section does not bar an action based on a product liability claim against a manufacturer or supplier of a product who made an express, written warranty as to the safety of the product that was for a period longer than ten years and that, at the time of the accrual of the cause of action, has not expired in accordance with the terms of that warranty. (4) If the cause of action relative to a product liability claim accrues during the ten-year period described in division (C)(1) of this section but less than two years prior to the expiration of that period, an action based on the product liability claim may be commenced within two years after the cause of action accrues.

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Oklahoma	**Okla. Stat. tit. 76, § 18 (2010) Torts: Limitation of action.** An action for damages for injury or death against any physician, health care provider or hospital licensed under the laws of this state, whether based in tort, breach of contract or otherwise, arising out of patient care, shall be brought within two (2) years of the date the plaintiff knew or should have known, through the exercise of reasonable diligence, of the existence of the death, injury or condition complained of; provided, however, the minority or incompetency when the cause of action arises will extend said period of limitation. ***See also* Okla. Stat. tit. 12, § 96 (2010) Persons under disability in actions other than to recover realty—Exceptions—Personal injury to minor arising from medical malpractice.** **Okla. Stat. tit. 12, § 95 (2010) Limitations of other actions.** A. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards: 3. Within two (2) years: An action **** for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud—the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud.
Oregon	**Or. Rev. Stat. § 12.110 (2010) Actions for certain injuries to person not arising on contract; action for overtime or premium pay; action for professional malpractice.** (1) An action for assault, battery, false imprisonment, or for any injury to the person or rights of another, not arising on contract, and not especially enumerated in this chapter, shall be commenced within two years; provided, that in an action at law based upon fraud or deceit, the limitation shall be deemed to commence only from the discovery of the fraud or deceit. (4) An action to recover damages for injuries to the person arising from any medical, surgical or dental treatment, omission or operation shall be commenced within two years from the date when the injury is first discovered or in the exercise of reasonable care should have been discovered. However, notwithstanding the provisions of ORS 12.160, every such action shall be commenced within five years from the date of the treatment, omission or operation upon which the action is based or, if there has been no action commenced within five years because of fraud, deceit or misleading representation, then within two years from the date such fraud, deceit or misleading representation is discovered or in the exercise of reasonable care should have been discovered. **Or. Rev. Stat. § 12.115 (2010) Action for negligent injury to person or property.** (1) In no event shall any action for negligent injury to person or property of another be commenced more than 10 years from the date of the act or omission complained of. (2) Nothing in this section shall be construed to extend any period of limitation otherwise established by law, including but not limited to the limitations established by ORS 12.110.

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Pennsylvania	**40 Pa. Stat. § 1303.513 (2010) Medical Professional Liability: Statute of repose.** (a) GENERAL RULE.—Except as provided in subsection (b) or (c), no cause of action asserting a medical professional liability claim may be commenced after seven years from the date of the alleged tort or breach of contract. (b) INJURIES CAUSED BY FOREIGN OBJECT.—If the injury is or was caused by a foreign object unintentionally left in the individual's body, the limitation in subsection (a) shall not apply. (c) INJURIES OF MINORS.—No cause of action asserting a medical professional liability claim may be commenced by or on behalf of a minor after seven years from the date of the alleged tort or breach of contract or after the minor attains the age of 20 years, whichever is later. (d) DEATH OR SURVIVAL ACTIONS.—If the claim is brought under 42 Pa.C.S. § 8301 (relating to death action) or 8302 (relating to survival action), the action must be commenced within two years after the death in the absence of affirmative misrepresentation or fraudulent concealment of the cause of death. (e) APPLICABILITY.—No cause of action barred prior to the effective date of this section shall be revived by reason of the enactment of this section. (f) DEFINITION.—For purposes of this section, a "minor" is an individual who has not yet attained the age of 18 years. **42 Pa. Con. Stat. § 5524 (2010) Two year limitation.** The following actions and proceedings must be commenced within two years: (2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another. (7) Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud, except an action or proceeding subject to another limitation specified in this subchapter.
Rhode Island	**R.I. Gen. Laws § 9-1-14.1 (2011) Limitation on malpractice actions.** Notwithstanding the provisions of §§ 9-1-13 and 9-1-14, an action for medical, veterinarian, accounting, or insurance or real estate agent or broker malpractice shall be commenced within three (3) years from the time of the occurrence of the incident which gave rise to the action; provided, however, that: (1) One who is under disability by reason of age, mental incompetence, or otherwise, and on whose behalf no action is brought within the period of three (3) years from the time of the occurrence of the incident, shall bring the action within three (3) years from the removal of the disability. (2) In respect to those injuries or damages due to acts of medical, veterinarian, accounting, or insurance or real estate agent or broker malpractice which could not in the exercise of reasonable diligence be discoverable at the time of the occurrence of the incident which gave rise to the action, suit shall be commenced within three (3) years of the time that the act or acts of the malpractice should, in the exercise of reasonable diligence, have been discovered. **R.I. Gen. Laws § 9-1-13 (2011) Limitation of actions generally—Product liability.** (a) Except as otherwise specially provided, all civil actions shall be commenced within ten (10) years next after the cause of action shall accrue, and not after.
South Carolina	**S.C. Code Ann. § 15-3-545 (2010) Actions for medical malpractice.** (A) In any action, other than actions controlled by subsection (B), to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider as defined in Article 5, Chapter 79, Title 38 acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or

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	when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section. (B) When the action is for damages arising out of the placement and inadvertent, accidental, or unintentional leaving of a foreign object in the body or person of any one or the negligent placement of any appliance or apparatus in or upon any such person by any licensed health care provider acting within the scope of his profession by reason of any medical, surgical, or dental treatment or operation, the action must be commenced within two years from date of discovery or when it reasonably ought to have been discovered; provided, that, in no event shall there be a limitation on the commencement of the action less than three years after the placement or leaving of the appliance or apparatus. (C) The provisions of this section apply only to causes of action which arise after June 10, 1977, and, as to causes of action which arise prior to June 10, 1977, the statute of limitations existing prior to June 10, 1977, applies. (D) Notwithstanding the provisions of Section 15-3-40, if a person entitled to bring an action against a licensed health care provider acting within the scope of his profession is under the age of majority at the date of the treatment, omission, or operation giving rise to the cause of action, the time period or periods limiting filing of the action are not tolled for a period of more than seven years on account of minority, and in any case more than one year after the disability ceases. Such time limitation is tolled for minors for any period during which parent or guardian and defendant's insurer or health care provider have committed fraud or collusion in the failure to bring an action on behalf of the injured minor. **S.C. Code Ann. § 15-3-530 (2010) Three years.** Within three years: (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15-3-545.
South Dakota	**S.D. Codified Laws § 15-2-14.1 (2011) Medical malpractice action: two-year limitation.** An action against a physician, surgeon, dentist, hospital, sanitarium, registered nurse, licensed practical nurse, chiropractor, or other practitioner of the healing arts for malpractice, error, mistake or failure to cure, whether based upon contract or tort, can be commenced only within two years after the alleged malpractice, error, mistake or failure to cure shall have occurred, provided, a counterclaim may be pleaded as a defense to any action for services brought by a physician, surgeon, dentist, hospital, sanitarium, registered nurse, licensed practical nurse, chiropractor, or other practitioner of the healing arts after the limitation herein prescribed, notwithstanding it is barred by the provisions of this chapter, if it was the property of the party pleading it at the time it became barred and was not barred at the time the claim was sued or originated, but no judgment thereon except for costs can be rendered in favor of the party so pleading it. **S.D. Codified Laws § 15-2-12.2 (2011) Product liability action: three-year limitation.** An action against a manufacturer, lessor or seller of a product, regardless of the substantive legal theory upon which the action is brought, for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formula, installation, inspection, preparation, assembly, testing, packaging, labeling or sale of any product or failure to warn or protect against a danger or hazard in the use, misuse or unintended use of any product, or the failure to provide proper instructions for the use of any product may be commenced only within three years of the date when the personal injury, death or property damage occurred, became known or should have become known to the injured party.
Tennessee	**Tenn. Code Ann. § 29-26-116 (2011) Medical Malpractice: Statute of limitations—Counterclaim for damages.** (a) (1) The statute of limitations in malpractice actions shall be one (1) year as set forth in § 28-3-104. (2) In the event the alleged injury is not discovered within such one (1) year period, the period of limitation shall be one (1) year from the date of such discovery. (3) In no event shall any such action be brought more than three (3) years after the date on

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	which the negligent act or omission occurred except where there is fraudulent concealment on the part of the defendant, in which case the action shall be commenced within one (1) year after discovery that the cause of action exists. (4) The time limitation herein set forth shall not apply in cases where a foreign object has been negligently left in a patient's body, in which case the action shall be commenced within one (1) year after the alleged injury or wrongful act is discovered or should have been discovered. **Tenn. Code Ann. § 29-28-103 (2011) Products Liability Actions: Limitation of actions—Exception.** (a) Any action against a manufacturer or seller of a product for injury to person or property caused by its defective or unreasonably dangerous condition must be brought within the period fixed by §§ 28-3-104, 28-3-105, 28-3-202 and 47-2-725, but notwithstanding any exceptions to these provisions, it must be brought within six (6) years of the date of injury, in any event, the action must be brought within ten (10) years from the date on which the product was first purchased for use or consumption, or within one (1) year after the expiration of the anticipated life of the product, whichever is the shorter, except in the case of injury to minors whose action must be brought within a period of one (1) year after attaining the age of majority, whichever occurs sooner. (b) The foregoing limitation of actions shall not apply to any action resulting from exposure to asbestos or to the human implantation of silicone gel breast implants. (c) (1) Any action against a manufacturer or seller for injury to a person caused by a silicone gel breast implant must be brought within a period not to exceed twenty-five (25) years from the date such product was implanted; provided, that such action must be brought within four (4) years from the date the plaintiff knew or should have known of the injury. (2) For purposes of this subsection only, "seller" does not include a hospital or other medical facility where the procedure took place, nor does "seller" include the physician or other medical personnel involved in the procedure. (3) The provisions of this subsection only apply to causes of action not pending or decided on or before May 26, 1993. For the purposes of this subsection, a "pending case" is defined as a case actually filed by a silicone gel-filled breast implant recipient.
Texas	**Tex. Civ. Prac. & Rem. Ann. § 74.251 (2010) Statute of Limitations on Health Care Liability Claims.** (a) Notwithstanding any other law and subject to Subsection (b), no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided this section applies to all persons regardless of minority or other legal disability. (b) A claimant must bring a health care liability claim not later than 10 years after the date of the act or omission that gives rise to the claim. This subsection is intended as a statute of repose so that all claims must be brought within 10 years or they are time barred. **Tex. Civ. Prac. & Rem. Code Ann. § 16.003 (2010) Two-Year Limitations Period.** (a) Except as provided by Sections 16.010, 16.0031, and 16.0045, a person must bring suit for **** personal injury, **** not later than two years after the day the cause of action accrues. (b) A person must bring suit not later than two years after the day the cause of action accrues in an action for injury resulting in death. The cause of action accrues on the death of the injured person.

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Utah	**Utah Code Ann. § 78B-3-404 (2011) Statute of limitations—Exceptions—Application.** (1) A malpractice action against a health care provider shall be commenced within two years after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered the injury, whichever first occurs, but not to exceed four years after the date of the alleged act, omission, neglect, or occurrence. (2) Notwithstanding Subsection (1): (a) in an action where the allegation against the health care provider is that a foreign object has been wrongfully left within a patient's body, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered, the existence of the foreign object wrongfully left in the patient's body, whichever first occurs; or (b) in an action where it is alleged that a patient has been prevented from discovering misconduct on the part of a health care provider because that health care provider has affirmatively acted to fraudulently conceal the alleged misconduct, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable diligence, should have discovered the fraudulent concealment, whichever first occurs. (3) The limitations in this section shall apply to all persons, regardless of minority or other legal disability under Section 78B-2-108 or any other provision of the law. **Utah Code Ann. § 78B-6-706 (2011) Utah Product Liability Act: Statute of limitations.** A civil action under this part shall be brought within two years from the time the individual who would be the claimant in the action discovered, or in the exercise of due diligence should have discovered, both the harm and its cause.
Vermont	**Vt. Stat. Ann. tit. 12, § 521 (2011) Medical malpractice.** Notwithstanding section 512 of this title, and except as provided in sections 518 and 551 of this title, actions to recover damages for injuries to the person arising out of any medical or surgical treatment or operation shall be brought within three years of the date of the incident or two years from the date the injury is or reasonably should have been discovered, whichever occurs later, but not later than seven years from the date of the incident. No statute of limitations shall limit the right to recover damages for injuries to the person arising out of any medical or surgical treatment or operation where fraudulent concealment has prevented the patient's discovery of the negligence. Where the action is based upon the discovery of a foreign object in the patient's body, which is not discovered within the period of limitation under this section, the action may be commenced within two years of the date of the discovery of the foreign object. **Vt. Stat. Ann. tit. 12, § 512 (2011) Assault and battery; false imprisonment; slander and libel; injuries to person or property.** Actions for the following causes shall be commenced within three years after the cause of action accrues, and not after: (4) Except as otherwise provided in this chapter, injuries to the person suffered by the act or default of another person, provided that the cause of action shall be deemed to accrue as of the date of the discovery of the injury.
Virginia	**Va. Code Ann. § 8.01-243 (2011) Personal action for injury to person or property generally; extension in actions for malpractice against health care provider.** A. Unless otherwise provided in this section or by other statute, every action for personal injuries, whatever the theory of recovery, and every action for damages resulting from fraud, shall be brought within two years after the cause of action accrues. C. The two-year limitations period specified in subsection A shall be extended in actions for malpractice against a health care provider as follows: 1. In cases arising out of a foreign object having no therapeutic or diagnostic effect being left in a patient's body, for a period of one year from the date the object is discovered or reasonably should have been discovered; 2. In cases in which fraud, concealment or intentional misrepresentation prevented discovery of the injury within the two-year period, for one year from the date the injury is discovered or, by the exercise of due diligence, reasonably should have been discovered; and

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	3. In a claim for the negligent failure to diagnose a malignant tumor or cancer, for a period of one year from the date the diagnosis of a malignant tumor or cancer is communicated to the patient by a health care provider, provided the health care provider's underlying act or omission was on or after July 1, 2008. Claims under this section for the negligent failure to diagnose a malignant tumor or cancer, where the health care provider's underlying act or omission occurred prior to July 1, 2008, shall be governed by the statute of limitations that existed prior to July 1, 2008. However, the provisions of this subsection shall not apply to extend the limitations period beyond ten years from the date the cause of action accrues, except that the provisions of § 8.01-229 A 2 shall apply to toll the statute of limitations in actions brought by or on behalf of a person under a disability. **Va. Code Ann. § 8.01-243.1 (2011) Actions for medical malpractice; minors.** Notwithstanding the provisions of § 8.01-229 A and except as provided in subsection C of § 8.01-243, any cause of action accruing on or after July 1, 1987, on behalf of a person who was a minor at the time the cause of action accrued for personal injury or death against a health care provider pursuant to Chapter 21.1 (§ 8.01-581.1 et seq.) shall be commenced within two years of the date of the last act or omission giving rise to the cause of action except that if the minor was less than eight years of age at the time of the occurrence of the malpractice, he shall have until his tenth birthday to commence an action. Any minor who is ten years of age or older on or before July 1, 1987, shall have no less than two years from that date within which to commence such an action. **Va. Code Ann. § 8.01-249 (2011) When cause of action shall be deemed to accrue in certain personal actions**. The cause of action in the actions herein listed shall be deemed to accrue as follows: 7. In products liability actions against parties other than health care providers as defined in § 8.01-581.1 for injury to the person resulting from or arising as a result of the implantation of any prosthetic device for breast augmentation or reconstruction, when the fact of the injury and its causal connection to the implantation is first communicated to the person by a physician. **Va. Code Ann. § 8.01-243 (2011) Personal action for injury to person or property generally; extension in actions for malpractice against health care provider.** A. Unless otherwise provided in this section or by other statute, every action for personal injuries, whatever the theory of recovery, and every action for damages resulting from fraud, shall be brought within two years after the cause of action accrues. Section C. includes provisions that extend the statute of limitations for a medical malpractice action against health care provider.
Washington	**Wash. Rev. Code Ann. § 4.16.080 (2011) Actions limited to three years.** The following actions shall be commenced within three years: (2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated. **Wash. Rev. Code Ann. § 4.16.350 (2011) Action for injuries resulting from health care or related services—Physicians, dentists, nurses, etc.—Hospitals, clinics, nursing homes, etc.** Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against: (1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative; (2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

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(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative; based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW 4.16.340(5).

Wash. Rev. Code Ann. § 7.72.060 (2011) Length of time product sellers are subject to liability.
(1) Useful safe life. (a) Except as provided in subsection (1)(b) hereof, a product seller shall not be subject to liability to a claimant for harm under this chapter if the product seller proves by a preponderance of the evidence that the harm was caused after the product's "useful safe life" had expired.

"Useful safe life" begins at the time of delivery of the product and extends for the time during which the product would normally be likely to perform or be stored in a safe manner. For the purposes of this chapter, "time of delivery" means the time of delivery of a product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold. In the case of a product which has been remanufactured by a manufacturer, "time of delivery" means the time of delivery of the remanufactured product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold.

(b) A product seller may be subject to liability for harm caused by a product used beyond its useful safe life, if:

(i) The product seller has warranted that the product may be utilized safely for such longer period; or

(ii) The product seller intentionally misrepresents facts about its product, or intentionally conceals information about it, and that conduct was a proximate cause of the claimant's harm; or

(iii) The harm was caused by exposure to a defective product, which exposure first occurred within the useful safe life of the product, even though the harm did not manifest itself until after

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	the useful safe life had expired. (2) Presumption regarding useful safe life. If the harm was caused more than twelve years after the time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by a preponderance of the evidence. (3) Statute of limitation. Subject to the applicable provisions of chapter 4.16 RCW pertaining to the tolling and extension of any statute of limitation, no claim under this chapter may be brought more than three years from the time the claimant discovered or in the exercise of due diligence should have discovered the harm and its cause.
West Virginia	**W. Va. Code Ann. § 55-7B-4 (2011) Medical Professional Liability: Health care injuries; limitations of actions; exceptions.** (a) A cause of action for injury to a person alleging medical professional liability against a health care provider arises as of the date of injury, except as provided in subsection (b) of this section, and must be commenced within two years of the date of such injury, or within two years of the date when such person discovers, or with the exercise of reasonable diligence, should have discovered such injury, whichever last occurs: Provided, That in no event shall any such action be commenced more than ten years after the date of injury. (b) A cause of action for injury to a minor, brought by or on behalf of a minor who was under the age of ten years at the time of such injury, shall be commenced within two years of the date of such injury, or prior to the minor's twelfth birthday, whichever provides the longer period. (c) The periods of limitation set forth in this section shall be tolled for any period during which the health care provider or its representative has committed fraud or collusion by concealing or misrepresenting material facts about the injury. **W. Va. Code § 55-2-12 (2011) Personal actions not otherwise provided for.** Every personal action for which no limitation is otherwise prescribed shall be brought: (a) Within two years next after the right to bring the same shall have accrued, if it be for damage to property; (b) within two years next after the right to bring the same shall have accrued if it be for damages for personal injuries; and (c) within one year next after the right to bring the same shall have accrued if it be for any other matter of such nature that, in case a party die, it could not have been brought at common law by or against his personal representative.
Wisconsin	**Wis. Stat. § 893.55 (2010) Medical malpractice; limitation of actions; limitation of damages; itemization of damages.** (1m) Except as provided by subs. (2) and (3), an action to recover damages for injury arising from any treatment or operation performed by, or from any omission by, a person who is a health care provider, regardless of the theory on which the action is based, shall be commenced within the later of: (a) Three years from the date of the injury, or(b) One year from the date the injury was discovered or, in the exercise of reasonable diligence should have been discovered, except that an action may not be commenced under this paragraph more than 5 years from the date of the act or omission. (2) If a health care provider conceals from a patient a prior act or omission of the provider which has resulted in injury to the patient, an action shall be commenced within one year from the date the patient discovers the concealment or, in the exercise of reasonable diligence, should have discovered the concealment or within the time limitation provided by sub. (1m), whichever is later. (3) When a foreign object which has no therapeutic or diagnostic purpose or effect has been left in a patients body, an action shall be commenced within one year after the patient is aware or, in the exercise of reasonable care, should have been aware of the presence of the object or within the time limitation provided by sub. (1m), whichever is later.

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	Wis. Stat. § 893.56 (2010) Health care providers; minors actions. Any person under the age of 18, who is not under disability by reason of insanity, developmental disability or imprisonment, shall bring an action to recover damages for injuries to the person arising from any treatment or operation performed by, or for any omission by a health care provider within the time limitation under s. 893.55 or by the time that person reaches the age of 10 years, whichever is later. That action shall be brought by the parent, guardian or other person having custody of the minor within the time limit set forth in this section. **Wis. Stat. § 893.54 (2010) Injury to the person.** The following actions shall be commenced within 3 years or be barred: (1) An action to recover damages for injuries to the person. (2) An action brought to recover damages for death caused by the wrongful act, neglect or default of another.
Wyoming	**Wyo. Stat. Ann. § 1-3-107 (2011) Act, error or omission in rendering professional or health care services.** (a) A cause of action arising from an act, error or omission in the rendering of licensed or certified professional or health care services shall be brought within the greater of the following times: (i) Within two (2) years of the date of the alleged act, error or omission, except that a cause of action may be instituted not more than two (2) years after discovery of the alleged act, error or omission, if the claimant can establish that the alleged act, error or omission was: (A) Not reasonably discoverable within a two (2) year period; or (B) The claimant failed to discover the alleged act, error or omission within the two (2) year period despite the exercise of due diligence. (ii) For injury to the rights of a minor, by his eighth birthday or within two (2) years of the date of the alleged act, error or omission, whichever period is greater, except that a cause of action may be instituted not more than two (2) years after discovery of the alleged act, error or omission, if the claimant can establish that the alleged act, error or omission was: (A) Not reasonably discoverable within the two (2) year period; or (B) That the claimant failed to discover the alleged act, error or omission within the two (2) year period despite the exercise of due diligence. (iii) For injury to the rights of a plaintiff suffering from a legal disability other than minority, within one (1) year of the removal of the disability; (iv) If under paragraph (i) or (ii) of this subsection, the alleged act, error or omission is discovered during the second year of the two (2) year period from the date of the act, error or omission, the period for commencing a lawsuit shall be extended by six (6) months. (b) This section applies to all persons regardless of minority or other legal disability. **Wyo. Stat. Ann. § 1-3-105 (2011) Actions other than recovery of real property.** (a) Civil actions other than for the recovery of real property can only be brought within the following periods after the cause of action accrues: (iv) Within four (4) years, an action for: (C) An injury to the rights of the plaintiff, not arising on contract and not herein enumerated.

Source: LexisNexis State Statutes database.

Note: The statutory language included is from the current version of the state's code which may not reflect very recent legislative enactments yet to be codified.

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