New York leads the nation in medical liability payouts.

The introduction and passage of the Grieving Families Act in 2022 and its subsequent reintroduction in 2023 raises serious cost implications for physicians, hospitals and all health care professionals. The bill creates a new category of damages in wrongful death cases, which will increase the costs of medical liability insurance for New York health care providers and institutions.

Before considering whether to vote for this legislation, it is important to also consider the current costs of the New York medical liability system. As the following will demonstrate, actual statistics clearly show that New York is already the most expensive state in the nation when it comes to medical liability costs.

1) A report from the US Chamber of Commerce's Institute for Legal Reform, entitled "Nuclear Verdicts – Trends, Causes and Solutions" September 2022, studied nuclear verdicts issued in all 50 states of the U.S. during the years of 2010 through 2019[1]. A nuclear verdict is defined as a jury verdict of $10 million or more. Pages 17 and 18 of the report note that New York State ranks third highest in the country for nuclear verdicts, with 151 reported nuclear verdicts during this 10-year period. Medical liability cases were the 2nd highest category of cases at 22.5 percent of all nuclear verdicts in New York during those years. The report also pointed out that NY medical liability cases resulted in several verdicts exceeding $100 million

with some of these cases' verdicts consisting primarily of noneconomic damages (i.e., pain and suffering).

2) The table to the left is compiled by Diederich Health Care, a leading nationwide insurance brokerage specializing in providing medical malpractice insurance for health care professionals and facilities. Diederich obtains the information from the National Practitioner Data Bank, which by law receives detailed information on all medical malpractice awards and settlements.

The summary below contains the number of payouts for each year, the per capita payment for each year and NY's respective ranking in each year for those two items (with #1 in this case meaning the costliest ranking for those two items). In addition, the link to the website where you can see the complete payout analysis is at: https://www.diederichhealthcare.com/med-malpractice-payout-analysis-2022/, merely scrolling down on that page will reveal the payout analysis for years prior to 2022 (each payout year represents the payouts from the prior calendar year, i.e., the 2022 analysis is for 2021 payouts, whether through a verdict award or a settlement).

It is very instructive to take a closer look at the 2020 summary, which consists of medical liability payouts in New York during 2019 since of course Covid in 2020 lead to lengthy shutdowns of the New York State court system. In fact, it has taken until roughly December of 2022 for the New York court system to finally operate at the level it was operating at in 2019. For that reason, the 2021 payout figures for New York (as reported in year 2022) are much lower than the pre-Covid year of 2019. However, even though many other state courts were fully operational throughout 2021, New York courts struggled to open and were frequently closed for long stretches

New York State Medical Malpractice Payouts and National Rank[2]

YEAR	Per Capita Payment and Rank	Total Payouts and Rank
2022	$21.54 | 1st	$434M | 1st
2021	NOTE: no figures by Diederich for this year due to Covid leading to Court shutdowns	
2020	$34.01 | 2nd	$661M | 1st
2019	NOTE: no figures by Diederich for this year	
2018	$31.13 | 1st	$617M | 1st
2017	$35.49 | 2nd	$700M | 1st
2016	$35.95 | 1st	$711M | 1st
2015	$36.15 | 1st	$713M | 1st
2014	$38.83 | 1st	$690M | 1st
2013	$38.99 | 1st	$763M | 1st

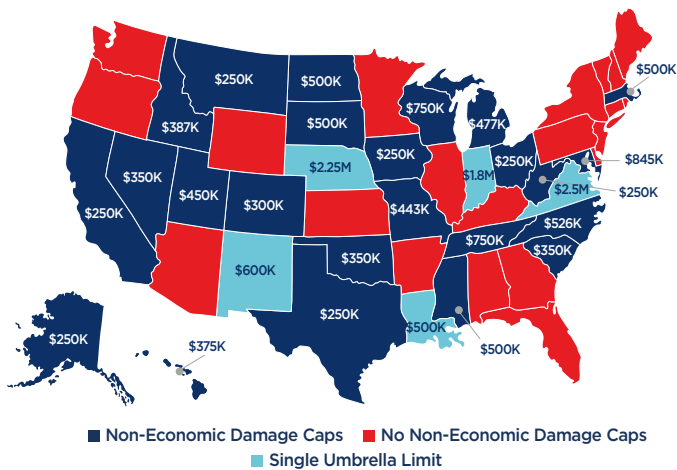during that year. As seen below, New York still led the nation in 2021 medical malpractice payouts.

New York was the clear leader in medical malpractice payouts in 2019 with a total of $661,703,250 in payments. New York was also second in the nation on a per capita basis, with a per capita amount of $34.01. The second highest state, Pennsylvania, had a payout total that was over $260 million **LESS** than New York. In fact, the *entire Western U.S.* (including California) paid out only $28 million more in medical malpractice payouts than New York.

3) According to the New York State Division of the Budget ("DOB") Memorandum[3] from the Bill Jacket for Governor Hochul's veto of S74A/A6770 (the commonly-

called "Grieving Families Act"), the total medical malpractice expense currently for Safety Net hospitals (who are already heavily subsidized by New York State in the amount of $1.7 billion annually), SUNY Academic facilities and State-run healthcare facilities is over $475 million dollars. See page 4 of the DOB Memo.

4) Supporters of the Grieving Families Act frequently point out that numerous states already have established the proposed new category of damages contained in the Act, namely damages for grief, anguish and loss of love. However, many of these states include in their laws a monetary limit on the total amount of damages that can be recovered in a lawsuit. As of May 2022, a majority of states (29) had a limit ("cap") on damages in medical liability cases.[4]

US MPL — Non-Economic Damage Caps[4]

- ■ Non-Economic Damage Caps
- ■ No Non-Economic Damage Caps
- ■ Single Umbrella Limit

* 500K in wrongful death cases only.   ©A.M.Best – used with permission.

CONCLUSION: New York is the most expensive state in the nation for medical liability costs. No other state even comes close. Any expansion of damages for wrongful death cases will dramatically increase these wildly excessive medical liability costs. Such an increase will lead to higher health care costs for all New Yorkers and a greater lack of availability of necessary health care for New Yorkers.

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1. https://instituteforlegalreform.com/research/nuclear-verdicts-trends-causes-and-solutions/
2. https://www.diederichhealthcare.com/med-malpractice-payout-analysis-2022/
3. https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:8591a402-367a-31a0-a423-9e46face16f0
4. AM Best data and research