

TABLE E-1 2007 State Medical Liability Reform Initiatives
(Data courtesy of Charlene MacDonald, American Academy of Orthopaedic Surgeons)

State	Proposed Reform	Status
Alabama	S.B. 446 would extend state liability protection to retired physicians who serve voluntarily in free health clinics.	The bill was indefinitely postponed, then failed when the legislature adjourned.
Arizona	S.B. 1505 would have increased the standards for admitting expert witness testimony and expert evidence.	The bill died in the Senate.
Arkansas	H.B. 2387 would make a statement that expresses sympathy or general benevolence by a hospital administrator, physician, or other health care worker related to an adverse outcome inadmissible in a civil action.	The bill died in committee.
Connecticut	H.B. 5223 would establish a \$1,000,000 cap for the recovery of non-economic damages resulting from personal injury or wrongful death based on the professional negligence of a health care provider.	The bill died in committee.
	H.B. 5398 would limit recovery of non-economic damages in medical liability cases to \$500,000 and require plaintiffs to file such claims in the county where the act or omission is alleged to have occurred.	The bill died in committee.
	S.B. 1445 would require the court to reduce certain economic damage awards in personal injury or wrongful death actions to reflect any medical costs reduced, forgiven or discharged on behalf of the claimant.	The bill died in committee.
Florida	H.B. 585 and S.B. 908 would allow hospitals to be protected by a \$500,000 non-economic damages cap if a hospital applied for and received an order from the Agency for Health Care Administration certifying that the facility complies with patient-safety measures.	Both bills died in committee.
	S.B. 1960 would provide standards for opinion testimony by lay witnesses. It would also provide standards for and limitations on expert testimony. The bill would not allow admission of the testimony if it is based on a contingency fee payment arrangement. The bill also provides requirements for mandatory pretrial hearings, requirements for mandatory pretrial disclosure of expert testimony, and interlocutory appeals.	The bill died in committee.
Georgia	S.B. 286 would eliminate liability protections aimed at health care provided in emergency departments. The current standard of proof that a plaintiff must meet is gross negligence. This bill would eliminate the gross negligence standard and return it to the “applicable standard of care.”	The bill died in committee.

	H.B. 221 would weaken the state's affidavit of merit requirement. It would create a 45 day extension for the filing of an affidavit when a recently retained plaintiff's attorney could not obtain an expert witness statement by the filing deadline.	The bill was enacted.
Hawaii	H.B. 223 would establish a health care reinvestment fund that would offer subsidies to subspecialists such as orthopaedics, trauma surgery, general surgery, and obstetrics/gynecology for medical liability insurance expenses.	The bill passed the House but died in the Senate.
	<p>H.B. 460, H.B. 549, H.B. 1325, and S.B. 202 are MICRA-based medical liability reform bills and contain either all or some of the following provisions:</p> <ul style="list-style-type: none"> • A \$250,000 limit on non-economic damages; • Defendant liability would be based on their fair share; • Attorney fees would be based on a sliding scale; • Collateral sources would be admissible; • The standard of proof for punitive damages would be clear and convincing evidence; • Periodic payment of future damages; • The statute of limitations for minors would be reformed; <p>and</p> <ul style="list-style-type: none"> • Alternative dispute resolution would be authorized. 	The bills died in committee.
Illinois	<p>H.B. 1895 and S.B. 1574 would enact the Full and Fair Non-economic Damages Act. The bills would require that in determining non-economic damages, the fact finder may not consider:</p> <ul style="list-style-type: none"> • Evidence of a defendant's alleged wrongdoing, misconduct, or guilt; • Evidence of the defendant's wealth or financial resources; <p>or</p> <ul style="list-style-type: none"> • Any other evidence that is offered for the purpose of punishing the defendant, rather than offered for a compensatory purpose. 	The bills died in committee.
	H.B. 3653 would create the Medical Malpractice Liability Insurance Premium Assistance Fund. The fund would be used to assist physicians who practice in low-income areas (defined as neighborhoods where a majority of the residents are at or below 300% of the federal poverty level).	The bill is in committee.
Iowa	H.B. 325 would enact new expert witness requirements for medical liability cases. Experts would have to be licensed to practice and practicing or teaching in the preceding three years in the same or a substantially similar specialty as the defendant. If the defendant is board certified in a specialty, the expert must also be certified in that specialty.	The bill died in committee.
Kansas	Under H.B. 2156, a court may not admit into evidence a communication of sympathy that relates to a loss, an injury, pain, suffering, a death, or damage to property. A court may admit a statement of fault into evidence, including a statement of fault that is part of a communication of	The bill died in committee.

	sympathy, if it is otherwise admissible under the Kansas rules of evidence.	
Kentucky	H.B. 505 proposes to submit to the voters an amendment to the Constitution of Kentucky that would allow the General Assembly to create statutory provisions relating to medical liability, including provisions for alternative dispute resolution, statutes of limitation or repose, peer review, expert witnesses, certificates of merit, and collateral source payments.	The bill died in committee.
Louisiana	The Louisiana Supreme Court recently reinstated the state's cap on total damages in medical liability cases. The \$500,000 cap (excluding future medical care) was struck down by the 3 rd Circuit Court of Appeals in 2006 (Arrington v. Galen-Med). The Court of Appeals determined that the current cap did not provide an adequate remedy and was unconstitutional because of this finding. The Louisiana Supreme Court vacated the judgment based on pleading and appellate errors.	The court sent the Arrington case, along with Taylor v. Clement, back to the appellate level for consideration of the remaining issues in those cases.
Maine	H.B. 655 would increase the cap on wrongful death non-economic damages from \$400,000 to \$600,000. This bill also requires the court to inform the jury about the statutory caps on both non-economic and punitive damages if either or both are sought in a wrongful death action.	The bill died in committee.
	H.B. 48 would require that medical liability cases go through a medical review board that would hold a hearing to determine if the defendant deviated from the standard of care and if the breach is the proximate cause of the plaintiff's injury. The board's decision would be admissible at a later trial.	The bill was reported unfavorably by a House committee.
Maryland	H.B. 495 and S.B. 642 attempt to eliminate the expert witness attestation as part of Maryland's certificate or merit requirement.	The bills were defeated.
	H.B. 779 is a health court bill. It calls on the chief judge of the Court of Appeals to consider the feasibility of health courts based on a report by the Medical Liability Division Task Force. The bill goes on to establish a task force whose report was due to the chief judge on December 1, 2007.	The bill was reported unfavorably by a House committee.
	S.B. 508 would permit the chief judge of the Court of Appeals to establish a medical liability division in each circuit court where the creation of a division is feasible.	The bill has been withdrawn.

Massachusetts	<p>S.B. 953 is a comprehensive medical liability reform bill. It would:</p> <ul style="list-style-type: none"> • Reform joint and several liability; • Increase the eligibility requirements for expert witnesses; • Set up standards for hospitals performing high risk surgeries; • Protect physicians' statements regarding apologies and other statements of regret; • Establish a Medical Professional Liability Reinsurance Program for medical professional liability insurance policies within the Division of Insurance; and • Require medical liability insurers to make a filing and receive the commissioner's approval before the insurer may use any rate or change any premium. 	The bill died in committee.
	<p>SB 955 would establish a medical injury court within the department of the Trial Court of the Commonwealth. The bill includes significant portions of Common Good's proposal.</p>	The bill died in committee.
Michigan	<p>H.B. 4267 would limit attorney fees in contingency fee cases. The fee would be set based on a sliding scale.</p>	The bill died in committee.
	<p>H.B. 4423 would add new requirements for expert witnesses who sign affidavits of merit in medical liability actions. The expert would have to be licensed and practicing or teaching in the same field as the defendant in order to be eligible to sign an affidavit of merit.</p>	The bill died in committee.
Minnesota	<p>H.B. 38 is a "loser pays" bill for civil suits. It would make a party and the party's attorney jointly liable for possibly attorney fees, costs, and the amount of damages sought in the complaint if the case was filed without substantial justification.</p>	The bill died in committee.
Mississippi	<p>H.B. 485 would establish a medical review panel for medical liability actions. Under this bill, the losing side would be responsible for the other side's reasonable attorney's fees under certain circumstances.</p>	The bill died in committee.
	<p>H.B. 597 would improve the state's current expert witness requirements. The bill would require experts to be licensed, board certified, and within one year of actively practicing in the same or substantially similar specialty as the defendant.</p>	The bill died in the House.
Missouri	<p>H.B. 695 provides that if damages are awarded for a liability claim for a deceased or disabled party's lost future earnings, then the deceased or disabled party's economic consumption must be deducted from the award.</p>	The bill passed the House but died in a Senate committee.
Nebraska	<p>L.B. 65 would extend the statute of repose in the Nebraska Hospital Medical Liability Act to 20 years. The current statute of repose in the act is 10 years.</p>	The bill died in committee.

	A.B. 347 is a wide-ranging tort reform bill. The portion of the bill important to physicians would require itemization of collateral sources and reduction of the verdict for collateral source payments.	The bill died in committee.
Nevada	S.B. 174 is an apology inadmissibility bill. The bill would protect a physician's statement in any civil or administrative proceeding.	The bill died in committee.
New Hampshire	A.B. 1511 would expand allowable damages permitted in wrongful death suits. The expansion would allow the recovery of damages for loss of society, companionship, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education.	The bill died in the Assembly.
	A.B. 4194 would limit non-economic damages in medical malpractice actions at \$250,000.	The bill died in committee.
New Mexico	H.B. 192 would create the Mediation Procedures Act. The bill establishes general mediation protocols.	The bill was enacted.
	H.B. 970 would limit non-economic damages in medical liability cases to \$250,000.	The bill died in committee.
New York	A.B. 3139 and S.B. 2144 would enact the "medical liability reform act." The bills include the following provisions: <ul style="list-style-type: none"> • A certificate of merit requirement; • Limits non-economic damages in such causes of action to \$250,000; • Reforms joint and several liability; and • Requires enhanced and comprehensive disclosure of expert witnesses to be used by any party in medical, dental and podiatric liability cases. 	The bills died in committee.
	A.B. 8066 and S.B. 4149 include enhanced expert witness requirements and would also permit the office of court administration to select up to five counties, each within a separate judicial district in this state, to establish specialized health care courts. Health court judges would be required to receive special training in various areas of medicine. Health courts would utilize independent experts to assist health court judges.	The bills are in committee.
	S.B. 1003 would limit medical liability judgments to the total amount of the medical liability policy held by the defendant or the sum total of the medical liability policies held by the defendants in cases of joint liability.	The bill died in committee.
	S.B. 2144 would strengthen the state's affidavit of merit requirement by requiring the expert witness to sign the affidavit and include information stating that there is a reasonable basis for the commencement of an action. The bill would also limit non-economic damages suffered by the injured plaintiff or other person who claims injury through such injured plaintiff, or as a consequence of injury to such injured plaintiff, not to exceed \$250,000.	The bill died in committee.

North Carolina	H.B. 448 includes a provision that states that peer review agreements shall not include provisions that prohibit the discovery in a civil action of information or materials obtained from peer review activities.	The bill died in committee.
	H.B. 1604 would cap non-economic damages at \$350,000. The bill would also require an affidavit of merit for negligence actions against health care providers.	The bill died in committee.
	S.B. 1089 would require clear and convincing evidence of a deviation in the standard of care in cases involving emergency care.	The bill died in committee.
North Dakota	S.B. 59 is an alternative dispute resolution bill (ADR). The bill would suspend the provisions in existing law concerning arbitration of medical claims and requires the parties to a medical negligence claim to arbitrate the claim in accordance with the bill's provisions prior to filing a complaint and would require the claimant to provide notice to the hospital or health care facility or professional prior to filing a complaint.	The bill died in committee.
Ohio	H.B. 1475 would limit non-economic damages to \$300,000 for all physicians. Under the bill, the judge could lift the cap if the judge determines by clear and convincing evidence that the defendant acted negligently.	The bill died in committee.
Oklahoma	H.B. 1886 and S.B. 805 are comprehensive tort reform bills. The applicable sections related to medical liability include: <ul style="list-style-type: none"> • A certificate of merit requirement for professional liability suits (Oklahoma's previous certificate of merit requirement was struck down by the Oklahoma Supreme Court); • It would also permit the admission of collateral source information and would permit offset of payment from such sources; and • The bill includes expert witness reforms. 	The bills died in committee.

	<p>S.B. 507 includes several significant medical liability reforms. Key provisions include:</p> <ul style="list-style-type: none"> • a \$300,000 cap on non-economic damages; • the clear and convincing standard of proof for punitive damages; • periodic payment of future damages over \$100,000; • reinstatement of Oklahoma's affidavit of merit requirement; • elimination of joint and several liability; • collateral source rule reform; • jury instruction requirements regarding the effect of taxes on damage awards; • strengthening of Oklahoma's expert witness requirements; • maintenance of the confidentiality of peer review information; • protection of the confidentiality of quality assessment efforts; and • broadening the scope of protections for volunteer activities. 	Governor Brad Henry vetoed the bill.
Oregon	S.B. 655 would establish a medical malpractice court.	The bill died in committee.
	H.B. 3503 would limit attorney fees to \$100,000 in civil actions against certain health care providers.	The bill died in committee.
	S.B. 666 would prohibit an attorney from contracting for or collecting contingent fees if the amount of the fee would result in an attorney being paid in excess of \$500 per hour.	The bill died in committee.
	S.J.R. 25 would propose an amendment to the Oregon Constitution that would allow the state to impose limitations on awards of non-economic damages in civil actions. The limit would be \$250,000, if the plaintiff is not permanently disabled by reason of the injury. The cap would increase to \$500,000, if the plaintiff is permanently disabled by reason of the injury.	The resolution died in committee.
Pennsylvania	H.B. 303 would allow up to a 20% discount in the assessment that the physician has to pay to the state Medical Care Availability and Reduction of Error (MCARE) Fund if the physician implements a total quality management health care system approved by the department of health. The MCARE fund provides compensation to liability claimants if judgments exceed an enrolled physician's liability limits.	The bill is in committee.
	H.B. 426 would limit non-economic damages to \$250,000 in medical liability actions.	The bill is in committee.
	H.B. 1343 would require mandatory arbitration prior to the commencement of a suit against a health care provider. Non-economic damages would be limited to \$250,000 per plaintiff. Arbitration awards may be appealed, but the finding would be admissible at trial.	The bill is in committee.

	H.J.R. 427 proposes amending the state constitution to allow the general assembly to enact laws limiting the amount of recovery for non-economic damages and punitive damages in medical liability actions.	The bill is in committee.
Rhode Island	<p>H.B. 5790 and S.B. 489 are comprehensive medical liability reform bills that would:</p> <ul style="list-style-type: none"> • Lower the statute of limitations tolling period for minors to age eight; • Require liability suits discovered after the statute of limitations has run to be commenced within two (2) years from the date of discovery; • Require a malpractice plaintiff to make substantive disclosure of expert testimony within one year from the date such information is requested, and sixty (60) days thereafter by the defense; • Cap non-economic damages at two hundred fifty thousand dollars (\$250,000) per claimant; • Condition the award of prejudgment interest to settlement offers; • Require that prejudgment interest is tolled when a plaintiff seeks and obtains a continuance of an assigned trial date; • Require that a certificate of merit accompany each claim for damages in a medical liability action; and • Overrule <i>Asermely v. Allstate</i>, 728 A.2d 461 (1999) and require that "bad faith" be proven before an award can be made in excess of policy limits. 	The bills died in committee.
South Carolina	H.B. 1105 and S.B. 33 would require plaintiffs to file a certificate of good faith as part of a medical liability lawsuit. The bills also include a provision that would allow the punishment of attorneys who repeatedly file frivolous lawsuits.	The bills died in committee.
Tennessee	S.B. 468 would eliminate the willful and wanton requirement from lawsuits derived from health care provided in emergency departments. This bill would lower the standard of proof required in these cases.	The bills died in committee.
Texas	S.B. 115 would establish a clear and convincing standard of proof for emergency care rendered in an emergency department.	The bill died in the Senate.
Utah	<p>H.B. 221 and S.B. 24 are comprehensive medical liability reform bills. They would:</p> <ul style="list-style-type: none"> • Cap pain and suffering damages at \$250,000 in medical liability actions; • Shorten the statute of limitations for minors; • Create mandatory pre-trial arbitration for medical liability claims; • Provide immunity for physicians volunteering/working in public health services; • Require the state guaranty association to pay claims filed against insolvent insurers; and • Permit the public inspection of all rate filings. 	The bills died in committee.

Vermont	H.B. 227 and S.B. 142 would establish screening panels for medical negligence claims.	The bills died in committee.
	H.B. 2063 is an apology inadmissibility bill. It would make the portion of statements, writings, affirmations, benevolent conduct, or benevolent gestures expressing sympathy or general sense of benevolence inadmissible as evidence of an admission of liability or as evidence of an admission against interest.	The bill died in committee.
Virginia	H.B. 2415 would clarify that when the plaintiff requests service of process or requests the defendant to accept service of process, he is certifying that he has obtained an expert opinion that the defendant deviated from the applicable standard of care.	The bill was enacted.
	H.J.R. 701 and S.J.R. 390 would establish a joint subcommittee to study the feasibility of offering liability protections to health care providers rendering aid during a state or local emergency.	The resolution was approved by both chambers.
Washington	H.B. 1873 and S.B. 5816 would expand the state's wrongful death statute by broadening the scope of possible plaintiffs in a wrongful death claim.	The bills died in a Washington Senate committee.
West Virginia	H.B. 53 would provide that a statement or gesture of a health care provider, or his or her employee or agent, that expresses apology, benevolence, compassion, condolence, or sympathy to a patient or patient's relative or representative is not admissible into evidence or subject to discovery in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.	The bill died in committee.
Wisconsin	A.B. 121 and S.B. 60 would prohibit expert witness testimony based on a contingency fee arrangement. The bills would also require experts to base their testimony on sufficient facts or data that are the product of reliable principles and methods.	The bills died in committee.