



# The Doctors Company

## GOVERNMENT RELATIONS

Winter 2020

# Advocacy Update

## 2020 YEAR END REVIEW

Heading into 2020, The Doctors Company expected to address legislation impacting the practice of medicine and challenges to non-economic damages caps. By the end of the first quarter, we quickly pivoted to address the tidal wave of executive orders and legislation issued by governments in response to the global pandemic. COVID-19 interrupted the traditional legislative process, exponentially multiplied the number of emergency actions, and caused a surge of limited liability protection initiatives.

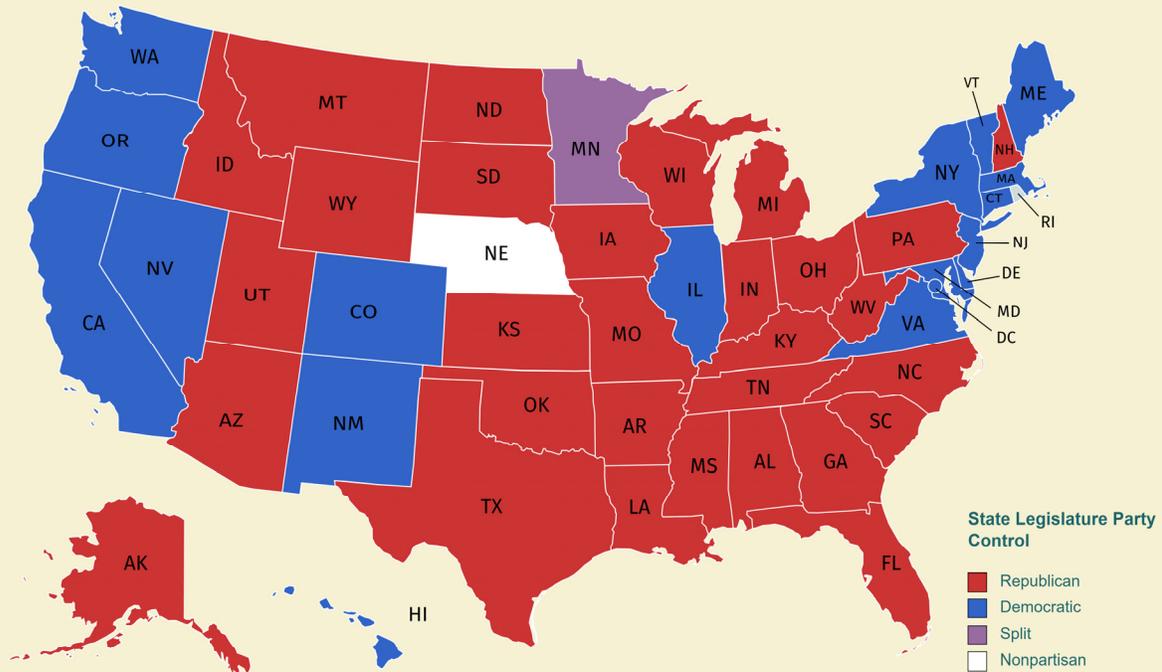
The numbers speak for themselves. In 2020, state and federal legislators introduced over 45,419 pieces of legislation and The Doctors Company actively monitored or directly engaged in 5,838 of those proposals. Adding to this volume of legislation, by the end of 2020 governors and regulatory agencies issued more than 4,035 COVID-19-related orders directing everything from individuals' day-to-day activities to the practice of medicine and business regulation.

These actions were meticulously inventoried by the [Council of State Governments](#). The Doctors Company vetted and acted on more than 975 member-impacting pandemic directives.

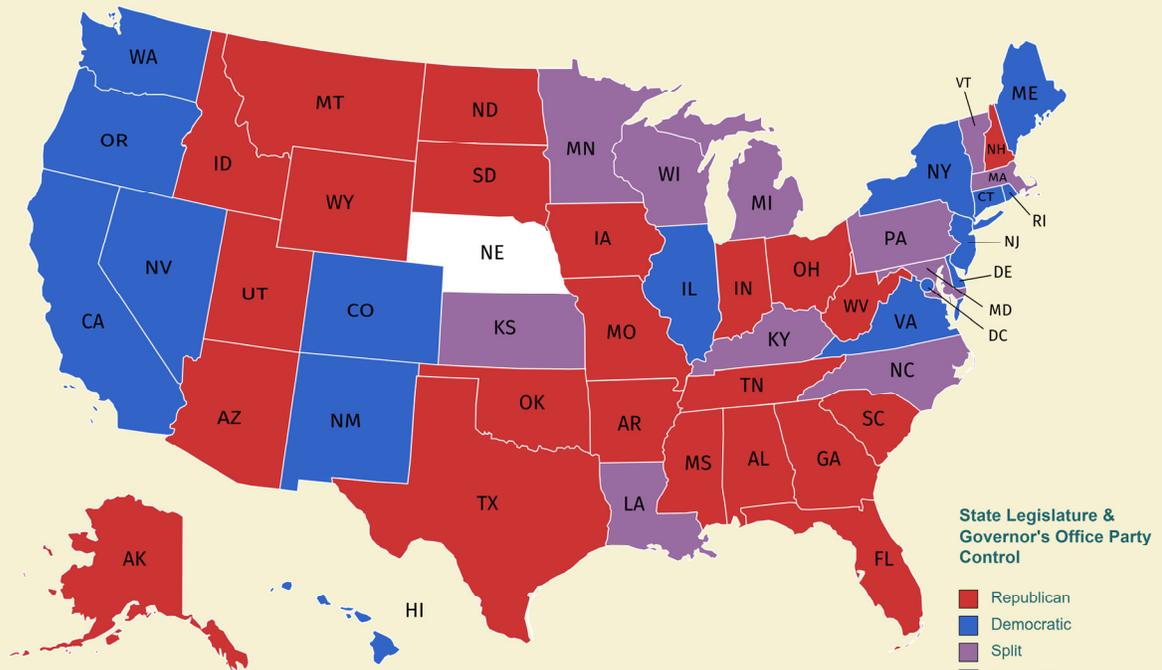
The pandemic led discussions in the public policy arena and colored the debates going into this fall's local, state, and federal elections. There are 7,383 state legislators, and, of those, 5,876 legislators from 44 states were on the November 3, 2020 general election ballots. Despite the large number running for election in 2020, only New Hampshire switched party control with both chambers switching parties. This is remarkable because generally 12 chambers change hands during a four-year cycle. Going into 2021, nationally party control remained status quo with Republicans holding both chambers in 29 states and Democrats controlling both chambers in 19 states. The unicameral state of Nebraska does not declare party control and Minnesota is the only state in the nation with a divided legislature. In contrast, there were only 11 gubernatorial seats up for election. Starting in 2021, there are 23 states with Democratic governors and 27 states with Republican governors, giving Republicans trifecta control in 23 states and Democrats trifecta control in 15 states with the remaining states having split control.



**2021 State Legislature Party Control**



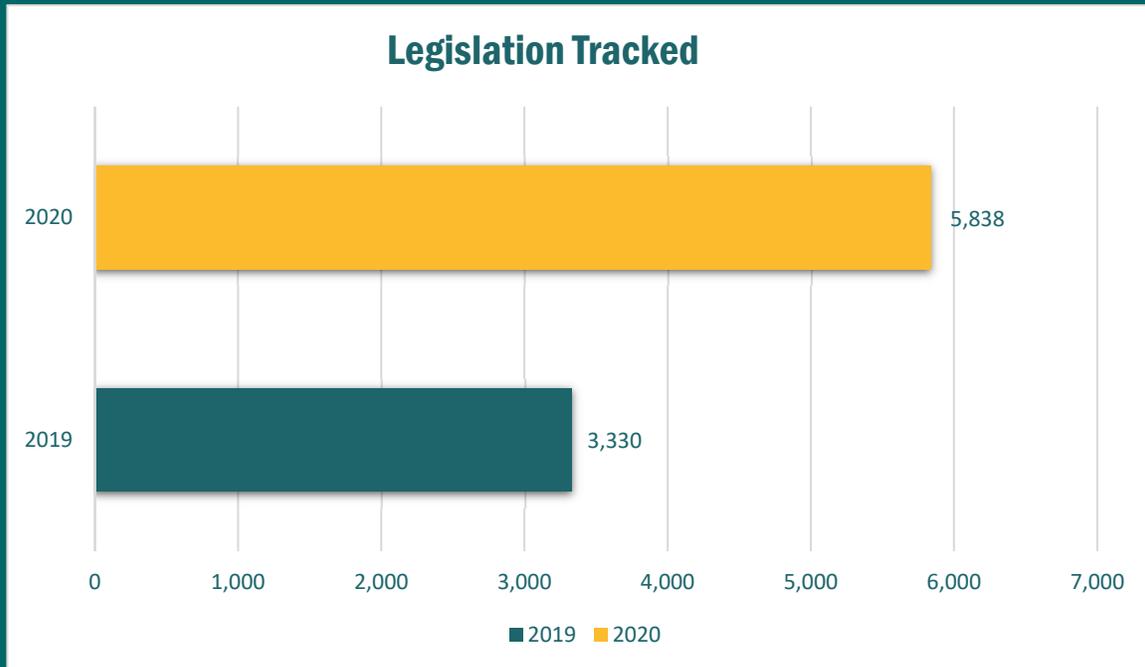
**2021 State Legislature & Governor's Office Party Control**



Please note: This update does not represent a full analysis or the full extent of our tracking or engagement. Nothing in this report should be considered legal advice.



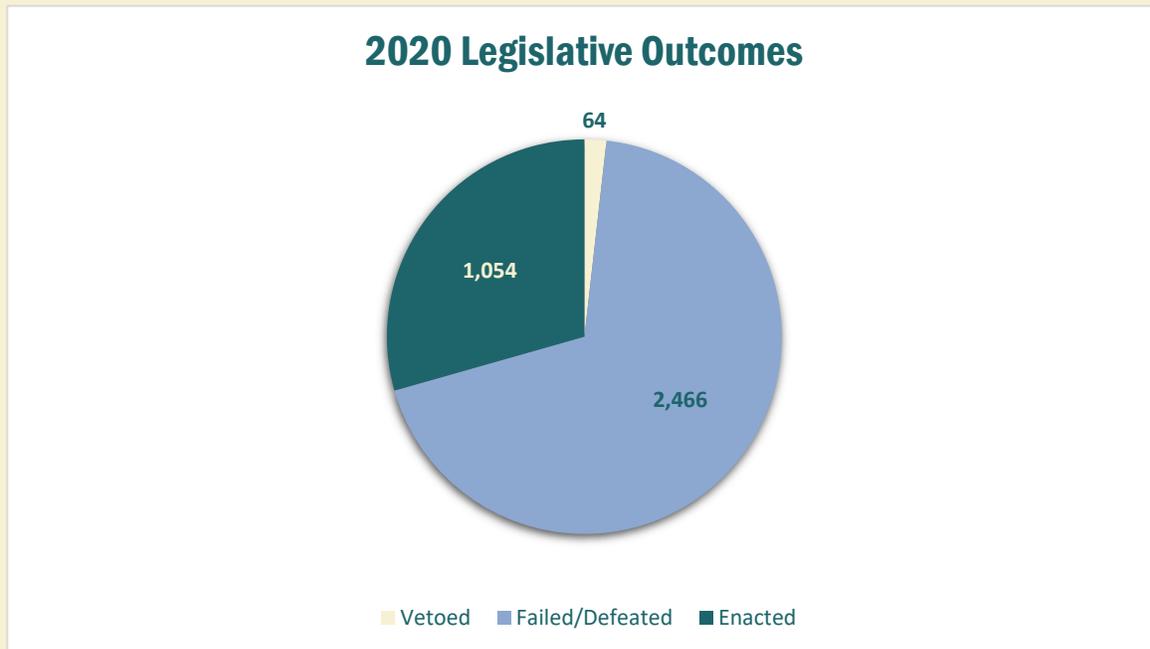
## Advocacy Spotlight: **2020 Legislative Activity**



In 2020 policy makers increased their interest in the practice of medicine and medical liability issues. The number of bills that The Doctors Company actively tracked increased from 3,330 bills in 2019 to 5,838 in 2020 – an increase of 75%. We expect this trend to continue in 2021.



## Advocacy Spotlight: 2020 Legislative Outcomes



Of the 5,838 bills tracked, 1,054 were adopted or enacted, 2,466 bills failed or were defeated, either due to failure to achieve sufficient votes for passage or not receiving a vote before adjournment of session and 64 bills passed the legislature but were vetoed by the governor. The remainder of 2020's tracked bills carried over into 2021 and are pending or unresolved.

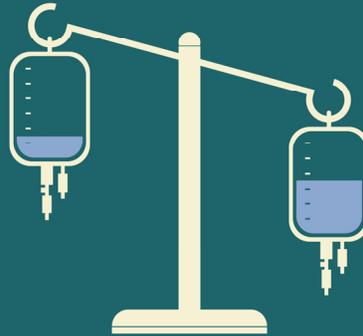
### TRACK LEGISLATION IN YOUR STATE

The Doctors Company maintains an interactive legislative tracking map on our website where you can track legislation in your state. You can view a selection of bills and regulations The Doctors Company is tracking by state simply by clicking on the jurisdiction of interest.

Our map can be found at <http://thedoctors.com/advocacy> and click the button in "Track Legislation in Your State."



## Advocacy Spotlight: **2020 Advocacy Successes**



While pandemic-related legislation and executive orders were the center of attention in 2020, routine legislation continued to be introduced and passed by state legislatures. The Doctors Company was successful in supporting and defeating many bills, including the following examples:

In Idaho, we worked to pass legislation to correct the definition of “recklessness” after the State Supreme Court changed the definition from what almost all states and attorneys understand it to mean: conduct that a person knew or should have known would cause harm. The court attempted to define it as something slightly more than negligence, a lower standard. House Bill 582 restored the prior standard.

In Missouri, we advocated for and secured significant tort reform providing clear delineation between ordinary negligence and the type of conduct required for punitive damages and specifically carved out language as it relates to medical malpractice claims so that a jury must find clear and convincing evidence that the healthcare provider intentionally caused damage or demonstrated malicious misconduct.

In Pennsylvania, we worked with our coalition and the legislature to defeat a proposal to alter the change of venue rule that would have allowed physicians and hospitals to be sued in Philadelphia, the number one judicial hellhole, according to the American Tort Reform Association.

In New York, we preserved funding in the State’s 2020 budget of \$105M for the Section 18 program. These funds are used to cover excess medical professional liability exposures above the standard policy limits and mitigate the cost of premiums.

In Virginia, we worked with the State Medical Society and others to help defeat legislation which would have required healthcare providers to assist patients’ attorneys with discovery in claims against the provider.

In Washington State, we worked with our coalition to defeat legislation which would have opened businesses, including healthcare practices, to qui tam lawsuits (lawsuits brought by citizens standing in the shoes of the State Attorney General) for not following complicated consumer protection laws.





In Iowa, we worked with coalition members to pass one of the nation's most comprehensive and open-ended liability protections for healthcare professionals and businesses. The protections were amended into legislation that would have established a hard-cap on medical professional liability claims; however, the cap language was deleted as part of the negotiations for the COVID-19 liability protections.

New York led the nation in adopting pandemic-related limited liability protections for healthcare providers. The Governor issued a sweeping executive order early last spring and the legislature subsequently passed legislation to narrow the application of the protections and we were successful in ensuring the more restrictive protections were not retroactive to the start of the pandemic.

In North Carolina, we worked with a coalition to successfully educate the Governor about the need for limited liability protections for healthcare providers who were responding to the COVID-19 state of emergency under the protections of the State's liability protections for emergency management workers.

Also, in North Carolina we worked with coalition partners to secure legislation providing liability protections for healthcare workers for acts and omissions in the provision of care during the COVID-19 state of emergency.

In Ohio, we supported our coalition partners to help pass a bill establishing that healthcare providers are not subject to professional disciplinary action and are not liable for damages for injury, death, or loss to a person or property arising from the provision, withholding, or withdrawing of services or the compliance with an order issued during or in response to an emergency unless their conduct constitutes gross negligence or is a "reckless disregard for the consequences so as to affect the life or health of the patient" or intentional or willful or wanton misconduct.

Working with coalition partners in Tennessee, legislation became law providing liability protections for healthcare providers during the COVID-19 state of emergency.

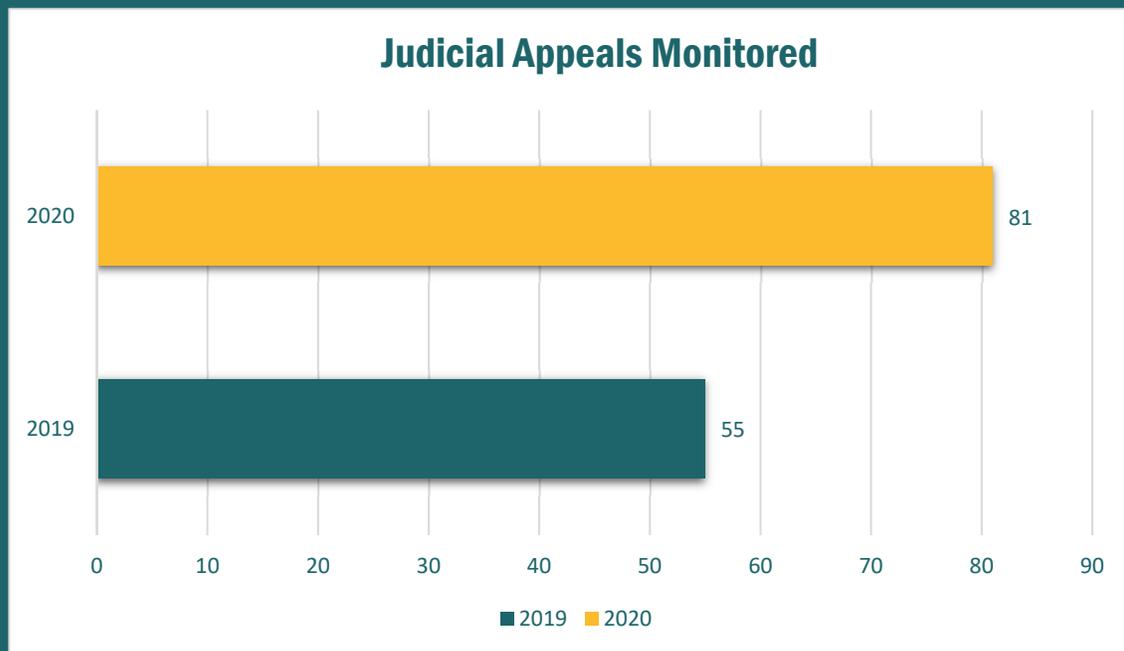
In Virginia, we worked with coalition members to secure an executive order providing liability protections to healthcare providers who deliver health care during the declared COVID-19 emergency.

Disclaimer: While the information included in the map is believed true and correct at the date of publication, February 28, 2021, please verify the information before acting on it as legislative action and executive orders after the time of publication may impact the accuracy of the information.

Visit [www.thedoctors.com/advocacy](http://www.thedoctors.com/advocacy) to get up-to-date legislative bill tracking information, government relations update articles, and past issues of the Government Relations Advocacy Update.



## Advocacy Spotlight: 2020 Amicus Successes



The Doctors Company continued our judicial advocacy efforts by filing friend of the court briefs. In 2019, the company filed 21 briefs, and in 2020, we filed an additional 21 to protect our members against plaintiffs' lawyers attacks. In fact, The Doctors Company increased the number of appellate cases tracked from 55 cases in 2019 to 81 cases in 2020—an increase of 47%.

Two examples of successes in protecting members' ability to practice medicine and protect medical liability reforms are from Colorado and Pennsylvania.

In Colorado, The Doctors Company and its coalition won at the Court of Appeals level in *Smith v. Surgery Center at Lone Tree*, achieving a victory for the medical defendants. In the brief, we defended the prohibition against the corporate practice of medicine, explained to the court that off-label use of prescriptions was common in health care and did not constitute malpractice, and defended a total assault on Colorado's damage caps in medical malpractice cases. This case has been appealed to the Colorado Supreme Court, but the high court has not yet accepted review. We filed an opposition to review.

In Pennsylvania, we won an appeal before the State Supreme Court in *Kirksey v. Children's Hospital UPMC*, a case that would negatively impact medical defendants' right to introduce evidence that the healthcare provider informed plaintiffs of the risks and complications of the medical procedure at-issue. The Doctors Company filed a "friend of the court" brief that argued the court should never have granted the appeal. The court agreed with our brief and dismissed the appeal based on our argument.



## OUR STORY: FOUNDED AND LED BY DOCTORS

Over 40 years ago, as California was gripped by a medical malpractice insurance crisis, leading physicians came together to pass historic medical liability reform legislation on behalf of doctors and other healthcare providers. In the wake of this achievement, The Doctors Company emerged as an entirely new type of insurance carrier—a carrier founded and led by doctors.

Malpractice lawsuits and jury awards in California skyrocketed during the 1970s, causing commercial insurance companies to raise rates by more than 300 percent or leave the market altogether. Thousands of physicians faced nonrenewal from their insurance companies, while others refused to provide care until the state addressed the crisis.

In May 1975, Governor Jerry Brown (D) called a special session of the legislature. During that session, leading medical groups helped secure the passage of the Medical Injury Compensation Reform Act (MICRA), landmark bi-partisan legislation that has become the national model for effective and durable medical liability tort reform.

After its passage, several of MICRA's leading proponents came together to establish a company that would continue the tradition of advocating for and protecting physicians. The Doctors Company founders recognized that an organization owned and led by physicians could focus on meeting the needs of its members rather than on answering the demands of outside stockholders. In addition, the member-owned structure meant that The Doctors Company would be uniquely aligned with physicians' interests and in an ideal position to represent and advocate for physicians in political and legal settings. The mission was clear: The Doctors Company would work relentlessly to advance, protect, and reward the practice of good medicine.

During the company's inaugural year in 1976, 450 physicians subscribed as members. Today, we are the nation's largest physician-owned medical malpractice insurer, protecting more than 90,000 members nationwide. As we grow, we remain true to the principles that inspired our founders—ensuring that the doctor's voice is heard, from the exam room, to the courtroom, to the nation's capital.

As long as personal injury trial lawyers continue to find new and inventive ways to undermine medical liability reforms, The Doctors Company will work to protect you and to safeguard your patients' access to healthcare.

### More Information

Please contact The Doctors Company's Government Relations team at [advocacy@thedoctors.com](mailto:advocacy@thedoctors.com) for more information.

To learn more about data-driven insights and to stay up to date on industry trends, follow and subscribe to The Doctors Company on [Twitter](#) (@doctorscompany), [YouTube](#), [LinkedIn](#), and [Facebook](#).

*Please note: This update does not represent a full analysis or the full extent of our tracking or engagement. Nothing in this report should be considered legal advice.*