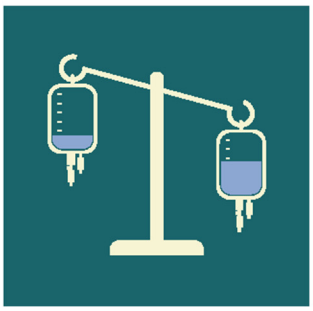
THE DOCTORS COMPANY



The Doctors Company

GOVERNMENT RELATIONS

Spring 2020

Advocacy Update

Executive Summary

In a normal year, The Doctors Company looks forward to state legislatures beginning their work in January with a crescendo of bill introductions and hearings through March, and a bevy of policies impacting the practice of medicine and medical professional liability being signed into law by mid-year.

The start to the year 2020 was no different, as 46 state legislatures went into session and by the end of the first quarter, The Doctors Company was tracking 2,926 bills that would impact our members if enacted. Montana, Nevada, North Dakota, and Texas did not have regular legislative sessions scheduled in 2020.

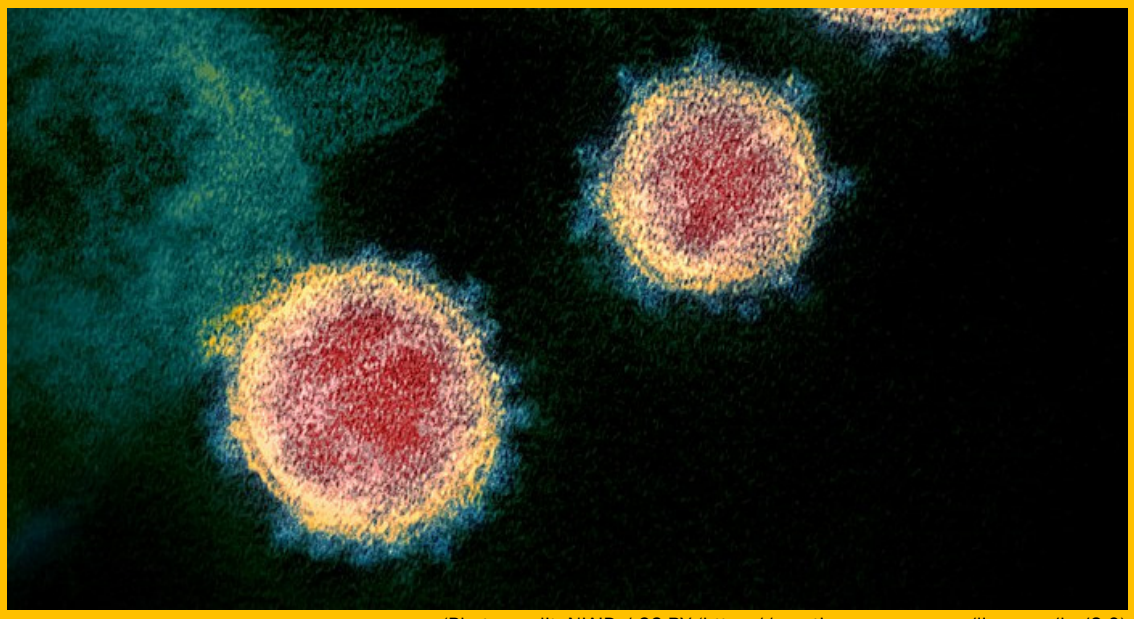
State legislatures introduced a predicable set of bills ranging from damages caps to telehealth initiatives to patient compensation funds. Public policy conversations rapidly shifted from conversations about scope of practice, insurance regulation, and maternal health to the very real government actions necessary to support healthcare providers and combat the COVID-19 pandemic.

This Q1 2020 edition of The Doctors Company Advocacy Update will provide you a glimpse into the many government actions taken to address the pandemic and will feature the usual summary of medical professional liability and practice of medicine legislation, an issue brief on the very important policy issue commonly called “Phantom Damages, or billed vs paid,” information about the proposition to repeal California’s MICRA protections, and a review of relevant case law.

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

Spotlight

Advocacy Spotlight: COVID-19



(Photo credit: NIAID / CC BY (https://creativecommons.org/licenses/by/2.0)

As the first week of April 2020 came and went, 42 states issued full stay-at-home orders to mitigate the surge of demand on the healthcare system and to slow the passing of the COVID-19 virus.

Federal, state, and local governments responded to the COVID-19 public health emergency with rapidly evolving guidelines, new and revised regulations, and new legislation. Hundreds of executive orders were issued, laws passed, and regulatory changes made at both the federal and state level affecting the practice of medicine and how health care is delivered.

The Doctors Company has been acting on each of these statewide orders as well as the actions taken by federal and local governments. In responding to the hundreds of executive orders, insurance commissioner guidance, health department advisories, and court directives, all aspects of our members' work and the company's operations have been impacted. Federal and state government actions in response to COVID-19 span a wide range of issues covering all aspects of the practice of medicine, including licensing, reimbursements, telemedicine expansion, healthcare provider liability and much more. From mid-March to mid-April, The Doctors Company has actively responded to more than 500 COVID-19 related government directives and mandates.

Limited Immunity

Healthcare provider liability protections have taken center stage, too, as policymakers become aware of the need to enact temporary immunity in relation to the public health emergency.

Advocacy Spotlight: COVID-19 (cont.)

Doctors, nurses, and hospitals have been dealing with unprecedented shortages of supplies, equipment, medications, and beds needed to care both for patients and medical personnel. Non-emergency healthcare services have been postponed or shifted to telemedicine. In response to personnel shortages, some medical practitioners have been providing healthcare services outside of their area of specialty. Retired practitioners have been called back to active duty. Healthcare providers in the hardest hit areas have been forced to make difficult triage decisions that were heretofore unheard of on this scale. The response to the pandemic and the difficult choices that are required have altered the standards of care for healthcare services.

At the Federal level, the Congress passed, and the President signed into law, limited Good Samaritan liability protections for volunteer healthcare professionals providing healthcare services in response to the public health emergency as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

States have taken a more comprehensive approach to providing pandemic-related immunities. In addition to the 50 states' Good Samaritan statutes providing limited immunity to licensed physicians acting in good faith who provide gratuitous care at the scene of an accident, some states are extending protections to volunteer physicians who are acting as part of the response to the official declaration of the public health emergency.

For example, New York's Governor Cuomo issued an executive order and the Legislature subsequently acted to codify new law to provide broad civil immunity to healthcare professionals for injuries or death alleged to be directly sustained as a result of providing care in response to the state's COVID-19 outbreak. The Doctors Company along with its New York subsidiary, Healthcare Risk Advisors, worked closely with the Administration and our allies to secure these immunities. The Doctors Company and our allies have done the same in several states as of the end of April including Alabama, Arizona, Arkansas, Connecticut, Delaware, Georgia, Illinois, Kansas, Kentucky, Massachusetts, Michigan, Mississippi, Nevada, New Jersey, New York, North Carolina, Rhode Island, Utah, Vermont, Virginia and Wisconsin. These states have acted beyond the scope of their existing statutes either through executive order or legislation, and we expect additional states to act soon in response to our collective advocacy efforts.

THE DOCTORS COMPANY
GOVERNMENT RELATIONS

Advocacy Spotlight: THE PROPOSITION TO REPEAL MICRA IN CALIFORNIA IS DELAYED UNTIL 2022

(Photo credit: George Hoden / Released to the public domain)

Proponents of the so-called "Fairness for Injured Patients" Act have publicly announced they will submit signatures in May to qualify their initiative for the November 2022 ballot. If enacted, this initiative would effectively repeal California's Medical Injury Compensation Reform Act (MICRA).

As we said previously, we believe this is a time for patient care, not ballot measure politics, and we're glad to see proponents realize that too.

It's unfortunate that while California's health providers are courageously working on the frontlines of this crisis, a few opportunistic trial lawyers have remained focused on a ballot measure that would substantially increase the burden on California's doctors and clinics while inflating healthcare costs for everyone. Whether it's 2020 or 2022, any ballot measure that reduces access to health care and increases costs for all Californians is bad medicine.

Our healthcare providers are dedicated to keeping patients safe, containing healthcare costs and ensuring those who need access to health care the most have it, which is evidenced by the work they are all doing on the frontlines of this pandemic. Healthcare providers have our continued thanks and gratitude during this time.

Please visit www.thedoctors.com/MICRA to learn more.

Issue Spotlight:
DOUBLE RECOVERY AND PHANTOM DAMAGES

(Photo credit: George Hoden / Released to the public domain)

Double recovery occurs when a plaintiff in a lawsuit is allowed to recover money (damage awards) for costs paid by a third party, such as his or her insurance plan, worker's compensation, or government paid health plan. Phantom damages occur when a jury awards a plaintiff economic damages, such as medical bills, at a greater rate than was actually owed or paid by a plaintiff, or on behalf of the plaintiff, for medical services resulting from an injury allegedly caused by someone else (e.g., alleged medical malpractice).

The Collateral Source Rule

The "collateral source rule" is a legal concept that dates back more than 150 years. The rule prohibits the introduction into evidence and reduction in a jury award of third-party payments, such as insurance, made to a plaintiff for alleged damages.

The original rationale behind this rule was to ensure that plaintiffs are fully compensated for their losses (i.e., made whole) and not penalized for taking special measures, like buying insurance, and ensuring that a defendant is accountable for the expenses incurred by the injury. However, as purchasing insurance has become commonplace, plaintiffs are able to collect reimbursement from the defendant for the cost of health insurance and any deductibles or copayments they have paid thus making the plaintiff fully whole and the defendant accountable for those costs.

Double Recovery

By disallowing a jury to hear evidence of payments by a plaintiff's health insurance for their medical care, plaintiffs are able to collect double the damage award by collecting payment both from the insurer and the defendant for the same medical care. This is referred to as double recovery.

To increase fairness and reduce double payments, we believe the collateral source rule should be modified to allow jurors to review evidence of the payments made by insurers and others, while ensuring that awards fairly compensate patients for the actual costs they have incurred, such as the insurance premiums and copayments they have paid.

Issue Spotlight: DOUBLE RECOVERY … (cont.)

Phantom Damages

Because the traditional collateral source rule typically prohibits the introduction into evidence of payments made by other sources (e.g., health insurance), personal injury lawyers argue that evidence of the contractually reduced amounts insurers or others have paid should therefore also not be admissible. These phantom damages significantly inflate the damages awarded in medical liability lawsuits. Medical procedures, services, and associated costs are almost always priced significantly higher than the amount that the medical provider is actually reimbursed. Public health insurance programs and private health insurance companies set (in the case of the government) or negotiate (in the case of private health insurers) with healthcare providers to pay for procedures, services, and associated costs at a lower rate. For example, a patient may have been treated in the emergency room and the bill indicates that the "rack rate" for that service is $10,000 but that the patient or their insurance is only obligated to pay the contracted rate of $6,000. Personal injury lawyers argue that the defendant in a lawsuit should be required to pay the $10,000 billed amount rather than the $6,000 that was actually paid by the public or private plans. The $4,000 difference between these two amounts is an example of what is commonly known as phantom damages. We believe that, equitably, the plaintiff's recovery for medical damages should be limited to the actual amount the plaintiff has paid or owes.

Cases in many different courts provide real world examples of the inequity of phantom damages. One such example occurred in 2016 in the case of *Patchett v. Lee*, where the trial court allowed Lee to introduce her accident-related medical bills totaling $87,706.36 as evidence. However, Lee was enrolled in the Healthy Indiana Plan (HIP), a government-sponsored healthcare program, and Lee's providers "accepted HIP's prevailing reimbursement rates of $12,051.48 in full satisfaction of those charges – an 86-percent discount from the amounts billed." *Patchett v. Lee*, 60 N.E.3d 1025, 1028 (Ind. 2016).

Fortunately, the Indiana Supreme Court overruled the trial court by ordering that the 86-percent reduction be introduced into evidence. In doing so, the Court altered the application of the collateral source rule in a way that reflected the true value of the damages.

We advocate for allowing the jury to see both the billed amount and the amount actually paid, as in the above example, since this is a more just presentation of the facts and does not hide relevant evidence from the jury.

Advocacy in Favor of Fairness

The Doctors Company has been advocating on behalf of our members to eliminate double recovery and phantom damages by supporting legislation and judicial action reforming the collateral source rule and opposing actions that seek to apply these laws unfairly.

In the first quarter of this year alone, The Doctors Company has participated in the filing of two amicus briefs, arguing that strict adherence to the traditional collateral source rule drives up the cost of healthcare and decreases patients' access to healthcare.

The Doctors Company has successfully advocated in many state legislatures and court actions for modifications of the collateral source rule to allow evidence of non-party payments made to plaintiffs and to allow evidence of the actual payments made for medical care. These policy changes are necessary to reduce double recovery and eliminate phantom damages thereby making healthcare more affordable and accessible.

Legislation

The Doctors Company saw advocacy success in early 2020 in a number of states. A few of those wins are summarized below as are some of the more notable pieces of legislation that saw action in the first quarter of the year.

In Colorado, The Doctors Company, through its state coalition, successfully advocated for passage of a new law that permits a physician assistant, practicing for at least three years, to use shared insurance policies to satisfy medical liability insurance requirements if permitted by the medical board.

Working within a coalition that includes The Doctors Company, the Georgia Legislature is considering a bill to streamline the litigation process while providing additional tort liability protection. These protections include a provision that would limit the amount of healthcare expenses a plaintiff can claim in an injury or wrongful death case to the actual amounts spent, or incurred but not yet paid, for necessary medical treatment. The expanded protections would also allow a defendant to challenge both the cost and the necessity of claimed treatments.

Newly enacted legislation in Idaho reverses an Idaho Supreme Court decision that had blurred the definition of "willful and reckless." This new law now clearly defines willful and reckless misconduct as a conscious act, setting it apart from ordinary negligence. The Doctors Company advocated for the enactment of this significant public policy because finding a healthcare provider's conduct willful and reckless pierces the cap on non-economic damages in medical malpractice cases.

Establishing the Maryland Birth Injury Fund is an advocacy priority for The Doctors Company. This legislation creates a patient compensation fund and received positive hearings before legislative committees prior to the adjournment of the Maryland Legislature. While the bill did not pass into law this year, we will continue to pursue the bill in 2021 in partnership with a coalition of like-minded interests.

The Doctors Company successfully advocated to defeat two legislative proposals in Virginia early this year. The first bill would have expanded bystander liability, a proposal pertinent to medical practitioners particularly in the emergency and obstetrics departments. Currently, Virginia does not allow negligent infliction of emotional damage claims for bystanders. The bill in question would have allowed family members, or non-family members in close proximity to a victim, who witnessed an alleged injury or death to recover damages for emotional distress; a proposal which would lead to a significant increase in liability exposure for our members. The second failed proposal was a provision to eliminate the medical malpractice cap for people seeking to sue physicians for overprescribing opioids.

Visit 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.

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Civil / Medical Liability Practice of Medicine

States		
 Alabama		**AL HB 303 / SB 219 – Public Health.** These bills impose criminal penalties on healthcare providers who perform a medical procedure or prescribe or issue medication for the purpose of altering a minor child's gender, or to delay puberty, and would impose a penalty of a Class C felony, which includes between one and ten years in prison and up to a $15,000 fine. (Status: Pending)
		AL SB 114 – Certified Registered Nurse Supervision. This bill prevents a licensed physician from entering into collaboration agreements with more than nine certified registered nurse practitioners, certified nurse mid-wives or assistants to physicians, or the full-time equivalent thereof, without showing good cause and obtaining medical board approval. (Status: Pending)
 Arizona		**AZ SB 1291 – Emergency Assistance.** This bill provides some civil liability protection to those who in good faith assist a person who has fallen, where the assistance is: 1) at the direction of an emergency dispatch operator, 2) if the assistance is to prevent further serious and eminent harm to the fallen and 3) where it appears the fallen person was not injured, stated he or she was not injured and requested assistance to stand or sit. Also directs skilled nursing and living facilities to develop fall assistance protocols. (Status: Pending)
		AZ SB 1027 – Informed Consent and Pelvic Examinations. This bill defines the performance of, or the supervision of the performance of, a pelvic exam on an unconscious or anesthetized patient by a licensed medical professional as professional misconduct. Exceptions would exist for forensic medical exams, where the patient presents unconscious and the exam is a medical necessary for diagnostic services and where the exam is part of a scheduled medical procedure where the patient has consented to the medical procedure. (Status: Pending)
 California		The 2020 California Legislative session has been partially suspended in response to the COVID-19 public health emergency. The legislature was off to a slow start prior to the suspension of the session. The Doctors Company has been engaged in advocacy around issues faced by our members primarily outside of the legislative process: the proposed initiative to repeal the Medical Injury Compensation Reform Act (MICRA) and the Attorney General's rulemaking process to implement California's sweeping privacy law, the California Consumer Protection Act (CCPA). Along with other coalition members, we are working with the Attorney General's office to address issues within the proposed regulations that would implement CCPA, including asking for an extension of the July 1, 2020, implementation deadline due to the impact of the COVID-19 pandemic. The extension has not yet been granted.

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 Colorado		**CO HB 1014 - Unconsented Misuse of Human Reproductive Material.** This bill creates a new civil cause of action and a crime if a healthcare provider, during assisted reproduction, uses human sperm or an egg from a person without the written consent of the patient. It specifies compensatory damages or liquidated damages of $50,000 in a civil action and specifies the violation is a Class 6 felony. The bill includes that conviction of an offense under the new crime is unprofessional conduct. (Status: Pending) **CO HB 1041 - Physician Assistants' Financial Responsibility.** The bill provides that a physician assistant, practicing for at least three years, may use shared policies to satisfy medical liability insurance requirements if the Colorado Medical Board permits. (Status: Enacted) **CO SB 102 – Provider Disclosure of Discipline and Conviction for a Sex Offense.** This bill requires physicians, osteopaths, and dentists to disclose to patients the healthcare provider's conviction of a sex offense or discipline for sexual misconduct. Failure to comply would be unprofessional conduct, but not create a right for an individual to file a lawsuit for the failure. (Status: Pending)
		CO HB 1061 – HIV Infection Prevention. This bill authorizes a pharmacist to prescribe and dispense HIV infection prevention drugs if the pharmacist fulfills specific requirements, including having a doctorate in pharmacy, carrying "adequate" professional liability insurance (no specified limits provided), and completing training from an accredited program. (Status: Pending)
 Florida		**FL HB 607 – Independent Practice of Advanced Practice Registered Nurses and Physician Assistants.** This new law allows certain Advanced Practice Registered Nurses (APNs) and certain physician assistants (PAs) to establish autonomous practices with no collaboration agreement or licensed supervision required. The law contains liability insurance requirements, specific types of medical treatments that are allowed and other rules regarding the independent practice of medicine by APNs and PAs. (Status: Enacted) **FL HB 1103 – Electronic Prescribing.** This bill requires prescriptions to be transmitted electronically. It would provide exceptions where: (1) electronic transmission is temporarily unavailable due to technology issues and the patient's record is so noted, (2) the prescription was issued in a free clinic where the prescriber will not bill or accept payment for services provided and (3) is issued to a patient of the emergency department of a hospital. (Status: Pending)
 Georgia		*The Georgia Legislature has suspended session; however, there is a notable bill in queue that may be considered when the Legislature reconvenes.* **GA SB 415 – Litigation Process.** This bill streamlines the litigation process while providing additional tort liability protection. The bill would help protect TDC's members by limiting the amount of healthcare expenses a plaintiff can claim in an injury or wrongful death case to the actual amounts spent, or incurred but not yet paid, for necessary medical treatment. It would further allow defendants to challenge both the cost and the necessity of claimed treatments. (Status: Pending)

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 Hawaii		**HI HB 2680 – Mental Illness Treatment.** This bill amends the definition of "dangerous to self." It defines the terms "gravely disabled" and "psychiatric deterioration." It broadens the term of "imminently dangerous to self and others" to persons who will likely be dangerous within the next days 90 (formerly within the next 45 days). It increases the maximum period of emergency hospitalization from 48 hours to 72 hours. (Status: Pending) **HI SB 2582 – Medical Aid in Dying.** This bill authorizes advanced practice registered nurses to provide medical aid in dying under the guidelines provided by the licensing board. It authorizes psychiatric mental health nurse practitioners to: (1) provide counseling to a qualified patient, (2) reduce the mandatory waiting period between oral requests from 20 days to 15 days, and (3) waive the mandatory waiting period for those terminally ill individuals not expected to survive the waiting period. (Status: Pending)
 Idaho		**ID HB 392 – Volunteer Healthcare Provider Immunity.** This bill expands immunity for healthcare volunteers that provide services at free medical clinics and community health screenings to those who are enrolled in an accredited education or training program for a healthcare license and who are directly supervised by a licensed healthcare professional. (Status: Enacted) **ID HB 582 – Willful or Reckless Misconduct.** This bill returns the definition of "willful and reckless" misconduct to its traditional definition as a conscious act that sets it apart from ordinary negligence, following a state supreme court decision that blurred the lines. This is significant because a finding of "willful and reckless" conduct by a healthcare provider pierces the cap on non-economic damages in medical malpractice cases. (Status: Enacted)
		ID SB 1240 – Advanced Practice Registered Nurses. This bill permits advanced practice registered nurses to sign, certify, stamp, verify or endorse any document required to be executed by a physician. (Status: Enacted) **ID SB 1331 – Chiropractors and Prescriptions.** This bill expands the authority of chiropractors who are certified in clinical nutrition to allow them to issue a prescription for drug products if the drug product is dispensed by a licensed pharmacy, delivered to the chiropractor, and the chiropractor administers the drug product to the patient in the office. (Status: Enacted)
 Indiana		*The Indiana Legislature adjourned sine die; however, some significant bills were introduced.* **IN SB 101 – Wrongful Death Cap.** This bill would have increased the aggregate damages cap for a wrongful death action from $300,000 to $700,000. (Status: Failed)
		IN HB 1336 – Telehealth. This bill would have expanded the definition of healthcare services and telemedicine and would have required telemedicine records to be kept using the same standards as other medical records. (Status: Failed)

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 **Iowa**	⚖	*The Iowa Legislature has suspended session; however, there is a notable bill in queue that may be considered when the Legislature reconvenes.* **IA SB 2338 – Non-Economic Damages.** This bill addresses the non-economic damages cap by limiting recoverable non-economic damages in suits against healthcare providers to $250,000 and limiting evidence offered to prove past medical expenses to those that were actually paid. (Status: Pending)
 **Kentucky**	⚖	*The Kentucky Legislature has suspended session; however, there are two noteworthy new laws.* **KY SB 72 / HB 1563 – Prohibited Procedures.** This new law defines female genital mutilation (FGM) and makes it a Class B felony. The law requires a person who knows or has reasonable cause to believe that a child is a victim of FGM, to immediately make an oral or written report to appropriate authorities. (Status: Enacted)
	⚕	**KY SB 60 – Newborn Screening.** This new law includes screening for spinal muscular atrophy to the list of heritable conditions tested at birth. (Status: Enacted)
 **Louisiana**	⚖	*The Louisiana Legislature has suspended session; however, there are two important bills in queue that may be considered when the Legislature reconvenes.* **LA HB 552 and SB 97 – Liberative Prescriptions.** This legislation limits the recovery of medical or healthcare expenses in a liability claim to the amounts actually paid or incurred by or on behalf of the claimant. (Status: Pending) **LA HB 826 / HB 856 – Coronavirus.** This legislation provides liability protection to any healthcare provider for the death of or injury to any person during the provision of care during the COVID-19 crisis unless the healthcare provider acts with gross negligence or willful misconduct. (Status: Pending)
 **Maine**	⚕	**ME HB 1392 – Pelvic Examinations.** This new law provides that a healthcare practitioner may not perform or supervise a pelvic, rectal, or prostate examination on a patient without first obtaining the patient's specific informed consent, orally and in writing, unless the patient is unconscious and the examination is diagnostically and medically necessary or the patient is an unconscious sexual assault victim and the exam is part of a forensic investigation. (Status: Enacted)

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 **Maryland**	⚖	*The Maryland Legislature adjourned sine die; however, there were two notable bills discussed.* **MD HB 1563 / SB 0879 – Patient Compensation Fund.** This bill would have established the "Maryland Birth Injury Fund," a state trust to pay for future medical expenses for qualified plaintiff(s) resulting from a birth-related neurological injury and prohibit a judgment from being entered requiring that payment for future medical care costs be paid by a defendant or defendant's insurer. (Status: Failed) **MD HB 1037 – Non-Economic Damages.** Under this bill, for any claim for personal injury or wrongful death arising on or after October 1, 2020, no statutory limitation on non-economic damages may apply if the damages resulted from willful, wanton, malicious, reckless, or grossly negligent acts or omissions. (Status: Failed)
 **Michigan**	⚖	*The Michigan Legislature has suspended session; however, there are notable bills in queue that may be considered when the Legislature reconvenes.* **MI SB 281 – Health Professional Misconduct.** Under this bill, after concluding there is a reasonable basis to determine a licensee or registrant has violated certain sections of the Michigan Penal Code, the Department of Health is required to report the name of that individual to the proper law enforcement authorities. (Status: Pending)
	⚕	**MI HB 4217 – Opioids.** This bill allows a practitioner to dispense controlled substances after receiving an electronically transmitted prescription. (Status: Pending) **MI SB 248 – Controlled Substances.** This bill requires electronic transmission for controlled substances prescriptions. (Status: Pending)
 **Mississippi**	⚖	*The Mississippi Legislature has suspended its session; however, there is a notable bill in queue that may be considered when the Legislature reconvenes.* **MS HB 150 – Dentist Liability Immunity.** This bill adds dentists to the list of healthcare providers who would receive liability protection for volunteer work, where the dentist received no compensation and acted in good faith in the provision of services. The liability protection would not apply to acts of gross, willful or wanton negligence. (Status: Pending)
 **Missouri**	⚖	*The Missouri Legislature has suspended session; however, there are notable bills in queue that may be considered when the Legislature reconvenes.* **MO HB 2049 – Arbitration.** This bill prohibits arbitration awards or judgments from being binding on a liability insurer, or from being used as evidence in a lawsuit against a liability insurer, requiring the tortfeasor to notify their insurer of any settlement agreements made. (Status: Pending) **MO SB 591 – Punitive Damages.** This bill provides that punitive damages can only be awarded after a showing of intentional harm without just cause or deliberate and flagrant disregard for the safety of others. (Status: Pending)

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 New Mexico		**NM State Malpractice Act.** Although there was no legislation on this issue in the 2020 session, The Doctors Company and our allies in the medical community continued to work with the Superintendent of Insurance on issues relating to the State's medical malpractice act. It is anticipated that there will be new legislation in 2021 dealing with the cap on non-medical damages, the definition of a qualified healthcare provider in relation to participation in the state's patient compensation fund, and the proper surcharge for participation in the fund.
		NM HB 21 – Employment Non-Disclosure Agreements. This law prevents a private employer from requiring an employee to sign a non-disclosure provision of a settlement agreement relating to a claim of sexual harassment, discrimination or retaliation in the workplace brought by the employee, and further, does not prevent an employee from disclosing such a claim. Confidentiality agreements are allowed where the agreement concerns the amount of a settlement or at the employee's request; it prohibits disclosure of facts that could lead to the identification of the employee. (Status: Enacted)
 New York		*In addition to the COVID-19 related healthcare provider immunities passed and discussed above, there are a variety of bills under consideration.* **NY A 2370 / S 6194 – Immunity and Limited Liability.** This bill prohibits defense counsel from interviewing non-party treating physicians. (Status: Pending) **NY S 6336 / A 7599 – Hearsay.** This bill expands hearsay exception to allow any employee statement even if employee is not authorized to speak for employer. (Status: Pending)
		NY S 02406 – Cultural Awareness. This bill requires cultural awareness training for medical professions, including two hours of coursework. (Status: Pending) **NY S 07173 / A 09520 – Obstetric Hemorrhage.** This bill requires hospitals to adopt, implement, and periodically update obstetric hemorrhage protocols. (Status: Pending)
 Oklahoma		**OK Senate Joint Resolution (SJR) 40 – Economic Losses.** This SJR is an attempt by the Legislature to put a constitutional amendment before the voters of Oklahoma. If passed by the Legislature and subsequently enacted by the people of Oklahoma, the amendment would limit non-economic damages to $350,000 regardless of the number of defendants or number of actions unless the defendant was found to have acted with reckless disregard for the rights of others, intentionally or with malice, was grossly negligent or the defendant's actions were deemed fraudulent. Additionally, the amendment would make it unconstitutional to place a limit on the amount of economic damages that a plaintiff may receive in a court award. The Oklahoma Legislature is currently suspended pending the outcome of the COVID-19 crisis. (Status: Pending)

 Oregon		**OR HB 4089 – Surgical Technology Practice Allowance.** This bill would have allowed an individual who is enrolled in or has completed a registered apprenticeship program in surgical technology, that is approved by the Oregon Health Authority or accredited by the National Commission for Certifying Agencies to practice in a healthcare facility. It would have eased restrictions from a 2015 statute that limits the practice of such individuals. (Status: Failed)
 Rhode Island		**RI HB 7266 – Patient's Right to Try Act.** This bill provides access to use experimental treatments for patients with a terminal illness. Patient must qualify under specific definitions for eligibility and treatments must qualify under specific requirements. Coverage by health insurance is optional. The medical board may not discipline healthcare professionals who comply with this act. (Status: Pending)
 South Dakota		**SD SB 5 – Mental Health Professional Immunity.** This bill provides qualified mental health professionals, who in good faith, transferred direct supervision of a person to a mobile crisis team or a certified law enforcement officer crisis intervention team, are immune from any civil liability for such referral. (Status: Enacted)
		SD HB 1005 – Telehealth Technology Provisions. This bill requires a proper provider-patient relationship when a healthcare professional uses telehealth before prescribing a controlled drug or substance. An internet questionnaire or consult alone is insufficient. (Status: Enacted)
 Tennessee		*The Tennessee Legislature has suspended session; however, there is a notable bill in queue that may be considered when the Legislature reconvenes.* **TN House Joint Resolution 816 – Non-Economic and Punitive Damages Civil Action Awards.** HJR 816 creates a constitutional amendment allowing the State Legislature to limit the amount of non-economic and punitive damages that may be awarded in civil actions, and would specify that these limits do not diminish the right to a trial by jury: placed before Tennessee voters. (Status: Pending)
 Virginia		**VA HB 127 / SB 285 – Bystander Liability.** These bills expand what is known as "bystander liability." Under this legislation, family members or non-family members in close proximity to a victim who witnessed an event during which the intentional or negligent infliction of injury or death to the victim occurred can recover damages for emotional distress. (Status: Failed) **VA SB 267 – Medical Malpractice Cap for Opioid Cases.** This bill eliminates the medical malpractice cap for people seeking to sue physicians for overprescribing opioids. (Status: Failed)

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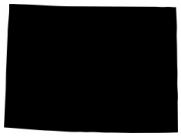
 West Virginia		*The West Virginia Legislature adjourned sine die. There are two notable new laws.* **WV HB 4003 – Telehealth.** This new law provides rulemaking authority to regulate telehealth practices and requires insurance coverage of certain telehealth services. (Status: Enacted) **WV SB 647 – DNR / DNI.** This new law allows physicians, PAs, or advanced practice registered nurses to issue DNR orders for patients in certain situations. (Status: Enacted)
 Wyoming		**WY SF 91 – Signature Authority for Advanced Practice Registered Nurses.** This new law permits advanced practice registered nurses, acting within their established scope, to fulfill any requirement for a signature, certification, stamp, verification, affidavit, endorsement, or other acknowledgement that would otherwise be provided by a physician. (Status: Enacted)

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Judiciary

The Doctors Company monitors court activity and participates in amicus curie, or "friend of the court" briefs to provide the courts with insight to the broader policy implications of the cases pending before them. The cases below are a collection of important appellate decisions that emerged during the first quarter of 2020 having an impact upon medical professional liability and the practice of medicine.

Georgia

Supreme Court	**Lee v. Smith** – Expert Witness Allowed After Failure to Disclose
	The Georgia Supreme Court held that a trial court may not exclude an expert witness solely because the witness was identified after the deadline set in a scheduling order. The trial court must consider: (1) the explanation for the failure to disclose the witness, (2) the importance of the testimony, (3) the prejudice to the opposing party if the witness is allowed to testify, and (4) whether a less harsh remedy than the exclusion of the witness would be sufficient to ameliorate the prejudice and vindicate the trial court's authority. (Decided: 02/10/2020)

Idaho

Supreme Court	**Eldridge v. West** – Medical Malpractice Act Does Not Supplant Related Common Law Causes of Action
	The Idaho Supreme Court held that the Idaho Medical Malpractice Act does not supersede or replace common law causes of action that may be pled against healthcare providers in a medical malpractice suit. This decision makes a variety of claims available to the plaintiff to plead. Additionally, the Court held that billed amounts for medical bills provided are admissible. However, jury awards should be reduced by the portions of the bill amount that were written off. (Decided: 12/20/2019)

Tennessee

Supreme Court	**McClay v. Airport Management Services LLC** – Non-economic Damage Cap is Constitutional
	The Tennessee Supreme Court upheld the cap on non-economic damages as constitutional under the state's equal protection clause, separation of powers doctrine, and right to a jury trial. (Decided: 02/26/2020)

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

Texas	
Supreme Court	**Glenn v. Leal** – Emergency Deliveries Should Receive Jury Instruction for Willful and Wanton Misconduct
	The Texas Supreme Court held that when the ordinary delivery of a child becomes an emergency due to complications, even if the delivery did not begin in the emergency department, the jury instruction for willful and wanton misconduct should be given to the jury. (Decided: 02/21/2020)

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.

More Information

Please contact The Doctors Company's Government Relations team at advocacy@thedoctors.com for more information.

Visit 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.

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.

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