



The Doctors Company
Healthcare Risk Advisors
TDC Specialty Underwriters
Medical Advantage



The Doctors Company **GOVERNMENT RELATIONS**

2022 / Issue #1

Advocacy Update

Executive Summary

After two highly unusual legislative sessions in 2020 and 2021, the 2022 session is settling back into the traditional rhythm of years past. As 2021 came to an end, it was clear legislatures around the nation were willing to expand their legislative agendas beyond their COVID-19 healthcare legislative focus. An uptick in medical liability tort reform bills revealed an increase in legislative attacks on the practice of medicine and medical liability reforms.

This trend appears to be continuing into 2022 as we see more proposals to eliminate caps on non-economic damages (the subjective, non-monetary losses), expansion of wrongful death statutes, and legislative interference in the patient-provider relationships and access to health care. Coloring this year's policy debates are the mid-term elections happening in mostly redrawn districts where the vast majority of federal and state candidates are vying for voters' attention.

In addition, we have seen several appellate courts allow personal injury attorneys to place questionable science in front of juries thereby diminishing trial judges' role as gatekeepers of facts and evidence. To stem this court trend, legislators will need to reaffirm the laws that protect the integrity of fact finding when seeking to obtain justice.

TRACK LEGISLATION IN YOUR STATE

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Please note: Nothing in this report should be considered legal advice. TDC Group refers to The Doctors Company and its wholly owned subsidiaries, Healthcare Risk Advisors, TDC Specialty Underwriters, and TDC Medical Advantage. This update does not represent a full analysis or the full extent of our tracking or engagement.



Advocacy Spotlight: Impact of Advocacy



TDC Group serves all of health care from small practices to large healthcare systems. Part of our mission is to build an enduring platform for national advocacy on behalf of the medical profession. Often, we lead advocacy efforts and work closely with coalitions and partners to manage significant medical liability legislation. Rarely do these policy debates fit neatly into a single legislative session. For example, two significant pieces of legislation affecting medical liability in New Mexico and Florida came to a head in 2021. They are continuing in 2022. These two examples are discussed below and illustrate the importance of advocacy within the medical community.

New Mexico

New Mexico healthcare professionals suffered a legislatively tumultuous year in 2021. During the 2021 legislative session, the legislature enacted, and the Governor signed into law, HB 75. This law rewrote the State's medical malpractice act and significantly increased the amount of non-medical damages available in medical liability lawsuits from \$750,000 to \$6 million over the next few years. Medical damages continue to be unlimited as they were before the 2021 changes to the law.

By the end of 2021, healthcare providers in New Mexico became increasingly aware of the negative impact HB 75 will have on their ability to provide care in the State and the healthcare community embarked upon an effort to lessen its negative impacts.

TDC Group, working with the New Mexico Medical Society, the Office of the Superintendent of Insurance, and other interested parties, supported the enactment of HB 11b to mitigate some of the harmful consequences of HB 75.



Advocacy Spotlight: Impact (cont.)

One of HB 75's more troublesome provisions deemed independent (non-employed) physicians who performed any services for a hospital an agent of a hospital. This linked an independent provider's liability damages to the hospital and facility non-medical damages cap of \$4 million with yearly increases of \$500,000 until it reaches \$6 million (at which point a COLA will be applied).

Importantly, the recently enacted HB 11b changes the definition of "independent healthcare provider" to make it clear that independent healthcare providers who provide services to hospital patients but are not hospital employees are treated as independent providers under the act and are therefore subject to the same liability damages as other independent providers at \$750,000.

Also, HB 11 temporarily suspends the \$4 million cap on non-hospital owned outpatient healthcare facilities for two years after which they will be subject to a \$5 million and growing cap. Once that temporary reprieve is lifted, outpatient facilities will once again be left unable to obtain adequate medical malpractice coverage.

Our advocacy efforts will continue on behalf of our members and their patients as we work to alleviate the adverse consequences of changes to the Medical Malpractice Act to support proposals that subject physician-owned outpatient facilities to a non-medical damages cap of no more than \$1 million.

Florida

Legislation is being pursued in Florida to allow the parents of an adult child who had no dependents (e.g., no wife or children, and the parents were not dependent on the adult child) to file medical liability lawsuits for non-economic (pain and suffering) damages upon the death of the adult child. The State's personal injury lawyers back this legislation.

Under current Florida law, parents who are not dependent on an adult child are not allowed to file such claims. Proponents of the change dubbed Florida's current law as a "free kill" law, alleging that healthcare providers can go unpunished for a medical liability-related death of an adult who has no dependents. This assertion is both false and deeply offensive as healthcare professionals work tirelessly to care for their patients. In addition, this change in law is unnecessary because under the current law, patients' dependents are fully compensated for their losses and enactment of this proposal would burden an already stressed healthcare system in Florida.

TDC Group conducted research and provided key insights to help educate lawmakers on this critical matter. TDC Group issued a grassroots action alert asking our members to contact their elected officials to oppose this legislation and hundreds of you heeded that call. Your voice helps lawmakers understand the real-world impact of the public policy choices they are facing.

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.



Advocacy Spotlight: Legislative Trends



Even at this early point in 2022's legislative sessions, there are several categories of legislation that have been identified as having the potential to impact TDC Group and our members. These include the following types of proposals:

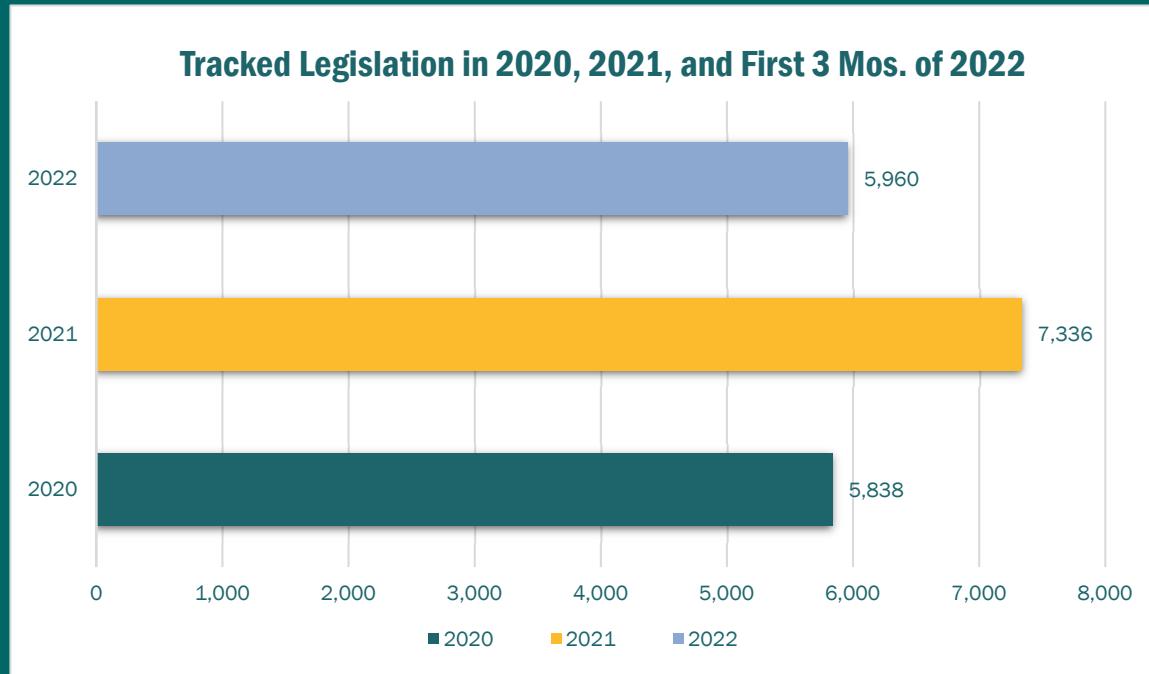
- Employer liability for damages suffered by an employee due to employer vaccine mandates.
- Prohibition of vaccine and mask mandates.
- Access to patients in facilities during declared states of emergency.
- Refining the use of telehealth and expanding access to necessary technology and infrastructure.
- Advanced practice clinician licensure and scope of practice.
- Interstate licensure compacts.
- Non-discrimination in organ transplants (discriminating against disabled recipients).
- Settlements involving minors.
- Limitations on patient-provider relationships including prohibitions on types of health care that can be provided.



Advocacy Spotlight: **2022 Legislative Activity**

By the end of January 2022, more than 33,000 bills were introduced by state legislatures – nearly 1,100 a day. Ten state legislatures – Arizona, Illinois, Hawaii, Missouri, Mississippi, New Jersey, New York, Tennessee, Virginia, and West Virginia – contributed to nearly two-thirds of the legislation introduced at the beginning of the year.¹

Incorporating these early 2022 introductions to the proposals carried over from 2021, 175,430² bills have been introduced between the federal and state governments to date. At the time of this publication, TDC Group is tracking and reporting on 5,960 bills. Of these, TDC Group is actively advocating – either directly or with our coalition partners – on several of these bills. Some of the more important proposals are discussed in detail later in this publication.



¹ [Capitol Canary: State Advocacy Exploded in January, February 4, 2022](#)

² State Net, March 11, 2022

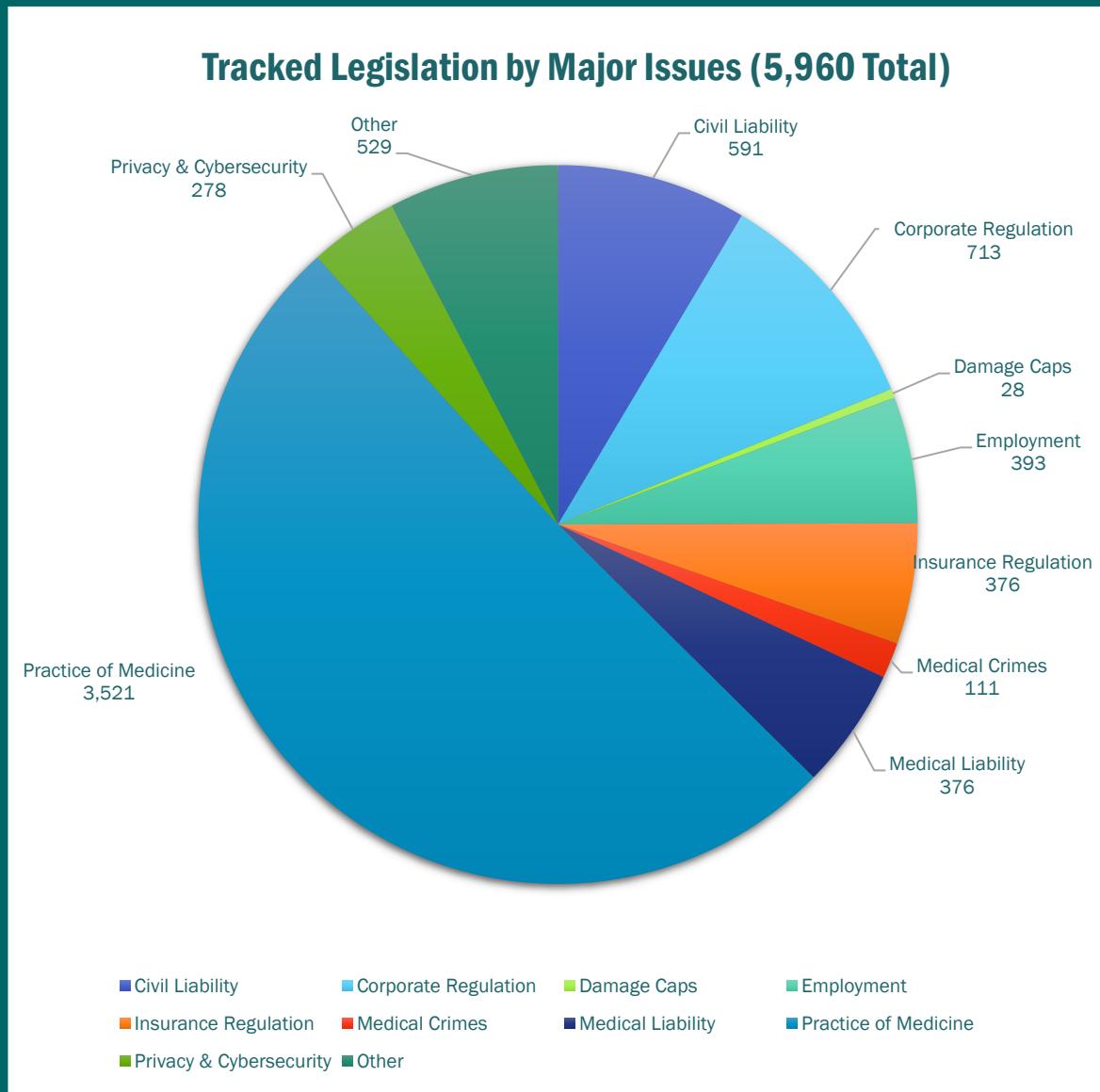
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Advocacy Spotlight: 2022 Legislative Activity (cont.)

MAJOR ISSUES CATEGORIES

This chart is a snapshot of the major categories within the 5,960 pieces of legislation tracked by TDC Group to date. Some bills fall into two or more categories.



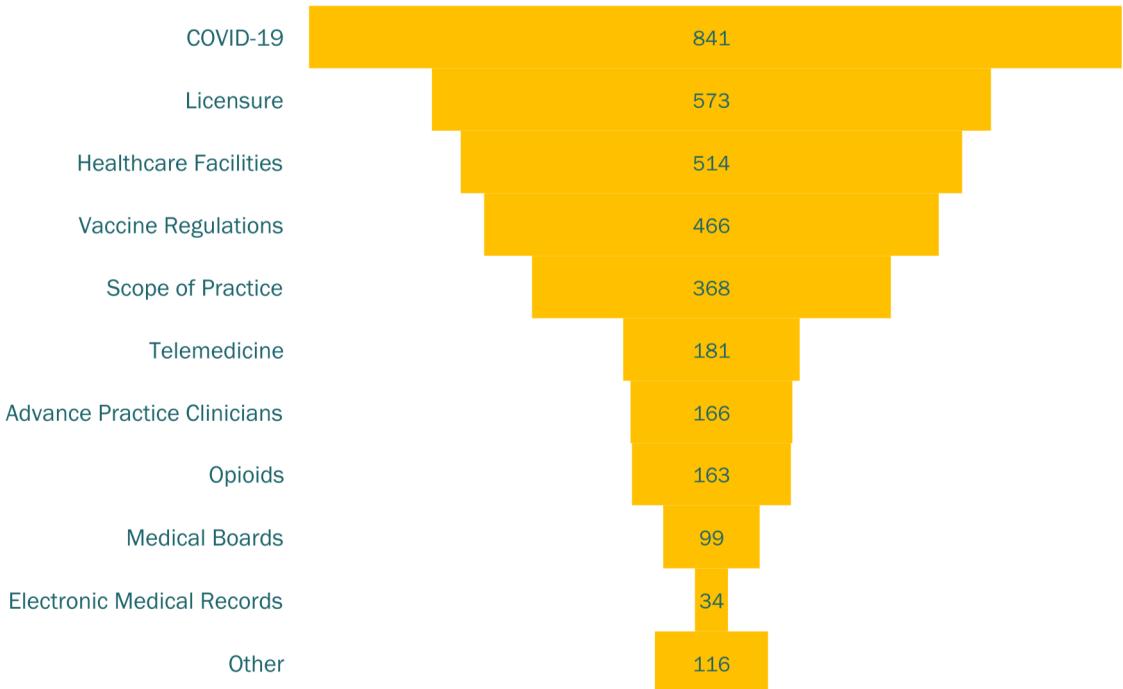


Advocacy Spotlight: 2022 Legislative Activity (cont.)

PRACTICE OF MEDICINE SUBCATEGORIES

Practice of medicine is the largest category of major issues TDC Group tracks. This chart provides a snapshot of the various subtopics that fall within this major category.

Practice of Medicine By Topic



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Advocacy Hotspots: High Priority Legislation

Dozens of priority bills became very active this spring. TDC Group successfully advocated for and against many of these proposals. A sample of the significant bills tracked and advocated on during the first half of the year is summarized below, current as of July 31, 2021.



Consumer Privacy

Due to broad definitions of what constitutes consumer information, healthcare providers collect data that may fall under new laws protecting consumer privacy. The complexity of the laws along with the challenges presented by data breaches and violations of consumer privacy laws call for careful attention for compliance and risk management.

Florida HB 9 / SB 1864 – Consumer Data Privacy: This bill is Florida's version of California's Consumer Privacy Act (CCPA) and requires collectors of consumer data to provide notice to consumers about data collection, sharing, and selling practices. It grants consumers the right to request data to not be disclosed, to be deleted or corrected, and to opt in or opt out of sale or sharing of such data. Finally, it provides non-discrimination measures and methods for requesting data and opting in or out of the sale or sharing of such data. The bill includes measures for a private cause of action and enforcement. TDC Group is working to mitigate the most egregious liability components of the final bill. It is expected that some version of this bill will be enacted as Governor DeSantis has indicated that this is a priority issue for his office.

New York HB 680 / SB 6701 – Consumer Data Privacy: Private Right of Action: This bill implements a consumer data privacy law similar to California's CCPA and grants New York consumers a private right of action for violations of the law as well as awarding attorney's fees to the prevailing plaintiff. With our coalition partners, we are advocating in opposition to this legislation.



Advocacy Hotspots: High Priority Legislation (cont.)



Medical Malpractice Liability and Damages

Bills expanding causes of action or damage awards for medical malpractice significantly increase the cost and frequency of potential lawsuits against healthcare professionals resulting in decreased access to care for the most vulnerable patients. In addition, some legislation alters the ability for healthcare providers to secure medical practice insurance coverage.

Florida HB 6011 / SB 262 - Damages in Medical Negligence Claims: This proposal changes Florida law regarding lawsuits by the parents of adult children. Under the proposal, when adult children have no surviving heirs and are not dependent upon the parents, parents of the adult child have an expanded ability to file claims upon the death of their child. As described above, TDC is actively advocating in opposition to this legislation.

Iowa HB 2279 – Medical Malpractice Damages: Tucked into Governor Reynold's unemployment funding legislation is a provision addressing hard caps on medical malpractice damages. The proposal affirms the current \$250,000 cap on non-economic damages for personal injury or death and creates a hard-cap of \$1 million when a jury determines that there is a substantial or permanent injury or death so as to warrant a finding that imposition of the \$250,000 cap would deprive the plaintiff of just compensation. In addition, the proposal amends the current definition of non-economic damages to make clear that "non-economic damages" does not include the loss of dependent care, including the loss of child care, due to the death of or severe injury to a spouse or parent who is the primary caregiver of a child under the age of eighteen or a disabled adult. These damages shall be considered economic damages. TDC supports this legislation as do several interested parties including the Iowa Medical Society and the Iowa Hospital Association.

Indiana SB 394 – Medical Malpractice Damages: This bill provides that medical bills and expenses incurred in connection with an injury or death of a patient are to be excluded from the maximum amount of damages due and increases the amount a healthcare provider is liable for in a medical malpractice action from \$500,000 to \$600,000. We are in opposition to this proposal.



Advocacy Hotspots: High Priority Legislation (cont.)

Medical Malpractice Liability and Damages (cont.)

Maryland HB 244 / SB 313 – Calculations of Damages: This bill prohibits the calculation of damages for loss of earnings resulting from personal injury or death from being reduced based on race, ethnicity, or gender. This bill is being carefully watched for any attempts to further change the State's liability laws.

Missouri SB 821 – Joint and Several Liability: This bill states that the liability of each defendant for damages shall be "several", meaning the parties are liable for only their respective obligations. Under the proposal, each defendant will be liable only for the amount of damages in direct proportion to their percentage of fault. Under the State's current joint and several liability law, a plaintiff may recover all the damages from any of the defendants regardless of their individual share of the liability. With our coalition partners, we are advocating in support of this legislation.

Missouri HB 1715 / SB 975 – Collateral Source Rule: This bill amends Missouri's collateral source rule to make it clear that the actual cost of medical care or treatment provided to a plaintiff must reflect discounts, price reductions, and write-offs, and it shall be relevant to determining the potential cost of future treatment or medical care. With our coalition partners we are advocating in support of this legislation.

New York HB 9007 / SB 8007 – Excess Medical Malpractice Insurance: New York Governor Hochul's proposed budget funds the Excess Medical Malpractice program at \$102 million for FY 22-23 (the same funding level secured for FY 21-22) and continues the hospital excess liability pool. However, the proposal restructures the fund so that the State's payments would be split over two fiscal years (currently, the State makes one annual payment).

Virginia SB 599 – Medical Liability Damage Caps: This legislation creates a "catastrophic injury" exception to Virginia's medical liability damages cap. The change would allow a judge or jury, depending on the nature of the trial, to disregard the damage cap on "...any other special circumstance in the case that warrants a finding that imposition of such a limitation would deprive the plaintiff of full and fair compensation for the injuries sustained...". The exception would swallow the rule. TDC is working closely with the State Medical Society, local lobbyists, and other interested parties to defeat this bill.



Advocacy Hotspots: High Priority Legislation (cont.)

California Ballot Initiative **MICRA Under Attack**

A measure is slated to appear on the November 2022 ballot in California that would obliterate existing safeguards for out of control medical lawsuits that would result in skyrocketing healthcare costs, prevent access to health care, and huge windfalls for attorneys who would get paid ahead of patients with uncapped fees. TDC Group is working with a coalition of physicians, nurses, community clinics, and dozens of other healthcare organizations to oppose this measure because it will hurt patients by raising costs and reducing access to care. Learn more by visiting www.thedoctors.com/MICRA.



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Advocacy Hotspots: High Priority Legislation (cont.)



Wrongful Death

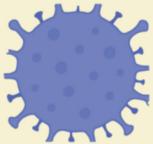
Bills expanding eligible classes of plaintiffs or damages awarded for wrongful death can significantly increase the cost and frequency of lawsuits against healthcare professionals.

New Jersey SB 465 – Wrongful Death Expansion: This bill expands the categories that an individual's beneficiaries can recover to include mental anguish, emotional pain and suffering, loss of society, and loss of companionship. TDC is opposing this legislation.

New York HB 6770 / SB 74 – Wrongful Death Actions: This bill changes the State's wrongful death law by expanding the pool of benefiting parties to include: close family members, spouse, domestic partner, children, siblings, parents, grandparents, step-parents, step-children (currently parents, spouse, children) and the list of eligible compensation to include: funeral expenses; medical care; grief and anguish; loss of love, society, protection, companionship, comfort, consortium; pecuniary injuries including loss of services, assistance, diminished inheritance; and, loss of nurture and guidance. This year the bill's proponents are calling the proposal the "Grieving Families Act." TDC and our coalition partners are actively advocating in opposition to this legislation.



Advocacy Hotspots: High Priority Legislation (cont.)



COVID-19 Emergency Liability Protections

COVID-19 laws, rules, and regulations affect all aspects of health care, including how and when treatment is provided and extending to the administration of medications and vaccines under emergency authorization. Legislatures continue to grapple with COVID-19 public policy including the continuation or reactivation of healthcare provider medical liability protections. From the onset of the pandemic, TDC has been advocating on behalf of our members for robust liability protections at the state and federal levels. A COVID-19 healthcare provider medical liability protections map and chart is available on [The Doctors Company's website](#).

Florida SB 7014 – Extension of COVID-19 Liability Protections for Health Care Providers (Enacted): This bill extends the previously enacted limited COVID-19-related liability protections for Florida healthcare providers through June 1, 2023. Previously, the protections only applied to actions for COVID claims that accrued before March 29, 2021, or within one year after March 29, 2021 (as per SB 72 from 2021). TDC and our allies worked long hours to ensure the passage of this legislation.

Hawaii SB 2199 – Coronavirus Early Treatment Liability Protections: This bill provides liability protection to healthcare professionals who administered early COVID-19 treatments. TDC is supporting this bill.

COVID-19 LIABILITY PROTECTIONS

A COVID-19 healthcare provider medical liability protections map and chart is available on [The Doctors Company's website](#).

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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TDC GROUP

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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. 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 for more information. Visit www.thedoctors.com/advocacy to get up-to-date legislative bill tracking information, government relations articles, action alerts and past issues of the Government Relations Advocacy Update.