The Florida Justice Reform Institute Opposes HB 6003; Any Expansion of Medical Negligence Liability Must Be Paired with Reasonable Damages Limitations

Escalating healthcare costs are a significant challenge in Florida. Exorbitant medical negligence claim payouts contribute substantially to this problem. Not only do high medical negligence claim payouts financially burden the state's healthcare system, but they also adversely affect the affordability and accessibility of healthcare for all Floridians, as more physicians retire and fewer physicians come to Florida, particularly in high-risk specialties, given the existing conditions of the state's medical negligence regime.

To address rising healthcare costs and improve access in Florida, medical negligence reform must take a comprehensive approach. In previous legislative sessions, lawmakers have attempted to reach a compromise by both limiting noneconomic damages in medical negligence cases and expanding the group of survivors eligible to recover such damages. This strategy was designed to balance the need to control healthcare expenses with the goal of ensuring fair compensation for those harmed by medical negligence, promoting a more sustainable and equitable healthcare system. However, these compromise efforts have faced significant opposition. In 2025, Governor DeSantis vetoed 2025 HB 6017, which would have expanded survivor eligibility for noneconomic damages without including corresponding limits on recovery.

Now, 2026 HB 6003 proposes the same significant expansion of survivor eligibility in medical negligence cases that Governor DeSantis vetoed earlier this year. Thus, HB 6003 would allow more individuals to pursue medical negligence claims and potentially increase the size of damages awards, without introducing any measures to offset these effects. Specifically, HB 6003 seeks to repeal subsection (8) of section 768.21, which currently prevents adult children and parents of an adult child from recovering certain noneconomic damages in medical negligence actions. Given the ongoing challenges in Florida's medical negligence system, the Legislature should not broaden the category of survivors eligible for noneconomic damages. For these reasons, the Florida Justice Reform Institute opposes HB 6003 as it stands and will only support the bill if it is amended to include limitations on damages.

Florida's Longstanding Prohibition on Recovery of Noneconomic Damages by Certain Survivors

Under Florida's Wrongful Death Act, survivors may recover noneconomic damages for losses such as companionship and mental pain and suffering. § 768.21, Fla. Stat. However, the statute carves out a specific exception: adult children and parents of adult decedents are precluded from recovering these particular damages if the death resulted from medical negligence.

This distinction is rooted in the legislative history of the Act and the principle that such recoveries are a matter of legislative grace, not a common law right. Prior to 1990, Florida law did

not permit adult children or parents of adult decedents to recover for pain and suffering in ***any*** type of wrongful death case. *See* § 768.21, Fla. Stat. (1989).

In 1990, the Legislature expanded the Act, creating a new cause of action for these survivors to recover noneconomic damages in most wrongful death claims. *See* Ch. 90-14, Laws of Fla. This expansion, however, occurred in the midst of a well-documented medical liability insurance crisis. Just two years earlier, the Legislature had passed comprehensive reforms—such as presuit investigation requirements and the no-fault Birth-Related Neurological Injury Compensation Plan ("NICA")—to stabilize the medical liability market. *See* Ch. 88-1, Laws of Fla.

In light of this ongoing crisis, the Legislature made a deliberate policy choice to exempt medical negligence claims from the 1990 expansion of wrongful death actions. This was a rational approach to balance the creation of new liability in general cases with the need to contain costs in the high-risk healthcare sector. The decision prevented the newly authorized damages from exacerbating the medical negligence crisis, recognizing that a higher percentage of medical liability claims involve a death compared to other negligence actions.

While critics have characterized this limitation as unfair, that argument overlooks the legislative context. The Legislature did not take away an existing right; rather, it made a reasoned decision not to extend a newly created one to the uniquely sensitive and crisis-affected area of medical negligence litigation.

A Brief Success: The Temporary Rate Relief and Eventual Invalidation of Medical Negligence Noneconomic Damages Limits

In 2003, the Florida Legislature passed section 766.118, Florida Statutes, to control medical liability insurance costs. While these caps did lead to temporary rate relief, the full objective of the legislation has not been realized due to judicial decisions striking the statute's damages caps.

Section 766.118 caps noneconomic damages at $500,000 when medical negligence is caused by a practitioner—i.e., a physician or nurse—regardless of the number of practitioners involved. Any one practitioner may not be liable for more than $500,000 in noneconomic damages, no matter the number of claimants involved. There is also a so-called aggregate cap: the total noneconomic damages recoverable by all claimants from all practitioner defendants in one occurrence of medical negligence may not exceed $1 million total. The statute caps noneconomic damages at $750,000 when the medical negligence is caused by a nonpractitioner, like a hospital. There is also an aggregate cap: the total noneconomic damages recoverable by all claimants from all nonpractitioner defendants must not exceed $1.5 million in the aggregate. The statute also outlines lower caps when medical negligence is premised on emergency services or the provision of Medicaid-funded care.

The statutory caps increase for certain types of injuries. For medical negligence caused by practitioners, the caps increase to $1 million in the aggregate where the negligence resulted in a permanent vegetative state or death. The cap also increases to $1 million if the trial court determines, among other things, that a manifest injustice would occur unless increased

noneconomic damages are awarded due to a catastrophic injury and particularly severe noneconomic harm. Similar higher caps apply when the medical negligence claim is made against nonpractitioners.

While section 766.118 is still on the books, its caps are largely unenforceable as a result of the Florida Supreme Court's 2014 decision, *Estate of McCall v. United States.*[1]

McCall involved a challenge to the statute's aggregate cap on noneconomic damages for multiple survivors. In the controlling opinion, Justice Lewis found that the aggregate caps on noneconomic damages in medical negligence cases violated equal protection because: (1) the caps "irrationally impact[] circumstances which have multiple claimants/survivors differently and far less favorably than circumstances in which there is a single claimant/survivor," and (2) the cap on noneconomic damages "bears no rational relationship to a legitimate state objective, thereby failing the rational basis test."[2] Justice Lewis noted that the statute provided no benefit whatsoever to survivors in exchange for the noneconomic damages caps. Justice Lewis also reviewed the legislative history giving rise to the caps and doubted the existence of data that supported any correlation between the cap on noneconomic damages and reduced malpractice insurance premiums.

In a concurring opinion, three justices agreed with Justice Lewis on his conclusion that the arbitrary reduction of survivors' noneconomic damages in wrongful death cases based upon the number of survivors lacked a rational relationship to the goal of reducing medical negligence premiums. But the concurring justices "disagree[d] with the plurality's independent evaluation and reweighing of reports and data . . . as part of its review of whether the Legislature's factual findings and policy decisions as to the alleged medical malpractice crisis were fully supported by available data."[3] The concurring justices agreed with the controlling opinion that, even if a medical negligence insurance crisis existed when the caps were first enacted in 2003, such crisis was not a permanent condition, and there was no evidence of a continuing medical negligence insurance crisis that would justify the arbitrary application of the statutory cap in wrongful death cases.

In 2017, in a case called *North Broward Hospital District v. Kalitan*, the Florida Supreme Court was tasked with deciding whether the statute's caps on noneconomic damages in personal injury medical negligence actions were unconstitutional when the caps were the same regardless of the severity of the injury. The Court held that these caps violated equal protection "because the arbitrary reduction of compensation without regard to the severity of the injury does not bear a rational relationship to the Legislature's stated interest in addressing the medical malpractice crisis."[4] The Court reasoned that, just like *McCall*, the caps at issue "create[d] a similar distinction between classes of medical malpractice victims, arbitrarily reducing the damages that may be awarded to the most drastically injured victims."[5] Further, based on the agreement in the majority opinions in *McCall* that "there is no evidence of a continuing medical malpractice crisis justifying the arbitrary application of the statutory cap, [the *Kalitan* Court] reach[ed] the same conclusion with regard to the unconstitutionality of the caps in the present case."[6]

Notably, despite what critics might contend, these damages limitations did lead to a reduction in medical liability insurance costs for the time they were in effect. Unsurprisingly, their invalidation led to new increases in those costs.

An analysis of medical liability insurance rates reveals a direct correlation between the implementation of statutory caps and a subsequent reduction in costs. Manual rates reached a historical peak in the 2005-2006 period, with average manual rates of $25,759 for policies with $250,000 per-claim limits and $50,357 for policies with $1 million per-claimant limits.[7]

Following this peak, rates entered a sustained period of decline, reaching a low point between 2015 and 2017. During this time, the average rate for a $250,000 limit policy fell by 30.2% to $17,962, while the rate for a $1 million limit policy dropped by 38.3% to $31,060, compared to their respective 2005 peaks.

This downward trend reversed following the key judicial decisions in *McCall* and *Kalitan*. Beginning in 2018, rates have increased for five consecutive years. As of 2023, the average manual rate stands at $22,610 for a $250,000 limit and $39,109 for a $1 million limit.

The Fall of Noneconomic Damages Caps Led to Nuclear Verdicts

The fall of the damages caps also unsurprisingly led to exorbitant verdicts, often propelled by large noneconomic damages awards. Below is a selection of these verdicts and arbitration awards. Additional verdicts are found in the attached appendix.

***Chavez v. Adolfo Gonzalez-Garciam M.D.*,** Case No. CACE18001011 (Fla. 17th Cir. Ct. 2019). In a medical negligence action following a patient's death, a jury awarded **$3.675 million** to the patient's husband, **$4.9 million each to three** of the patient's children, and **$6.125** million to the child who was born shortly before her mother's death, for a total of **$24.5** million in noneconomic damages.

Hayes v. Tenet Hialeah Health Sys. Hosp.. Inc., Case No. 2015-024325-CA-01 (Fla. 11th Cir. Ct. 2019). In this wrongful death action, a jury awarded the decedent's children **$15 million** in noneconomic damages.

Standley v. Melvyn H. Rech, D.O., Case No. CACE16019088 (Fla. 17th Cir. Ct. 2019). In this medical negligence action arising after an amputation, a jury awarded the plaintiff **$7 million** and the plaintiff's wife **$1.1 million** in pain and suffering damages, for a total of **$8.1 million** in just noneconomic damages.

Fernandez v. Baptist Health Medical Group Orthopedics, LLC, Case No. 18-013104 (Fla. 11th Cir. Ct. 2020). A pulmonary embolism following alleged medical negligence led to an eye-popping **$30 million noneconomic damages verdict** for the decedent's wife.

Carter v. Board of Trustees of the University of South Florida, Case No. 12-CA-9942 (Fla. 13th Cir. Ct. 2022). A jury awarded a medical negligence plaintiff **$5 million** in noneconomic damages, on top of $16 million in economic damages. This was after an appellate court had reversed and remanded for a new trial as a result of errors made by the trial court following a staggering $109 million verdict in the plaintiff's favor.

***Crohan v. Furman*,** Case No. 2019-CA-009248 (Fla. 13th Cir. Ct. 2022). In this medical negligence action, a jury awarded a staggering **$50 million** in noneconomic damages, on top of $18 million in economic damages.

***Magloire v. Mark A. Fulton, M.D.*,** Case No. 05-2015-CA-049372 (Fla. 18th Cir. Ct. 2022). A jury awarded an injured plaintiff **$10 million** in noneconomic damages and awarded his wife **$3.5 million** in noneconomic damages.

***Reed v. Life Care Centers of America*,** Case No. 2018-CA-013297-O (Fla. 9th Cir. Ct. 2022). A jury awarded the medical negligence plaintiff more than **$10.6 million** for her pain and suffering.

Hawkins v. Amed Reza Nematbkaksh, D.O., Case No. 2017-000526-CI (Fla. 6th Cir. Ct. 2023). Claims that a physician mistreated the patient's leg and back pain led to a verdict including **$11.5 million** in pain and suffering damages for the plaintiff, as well as **$3.75 million** in noneconomic damages for the patient's wife.

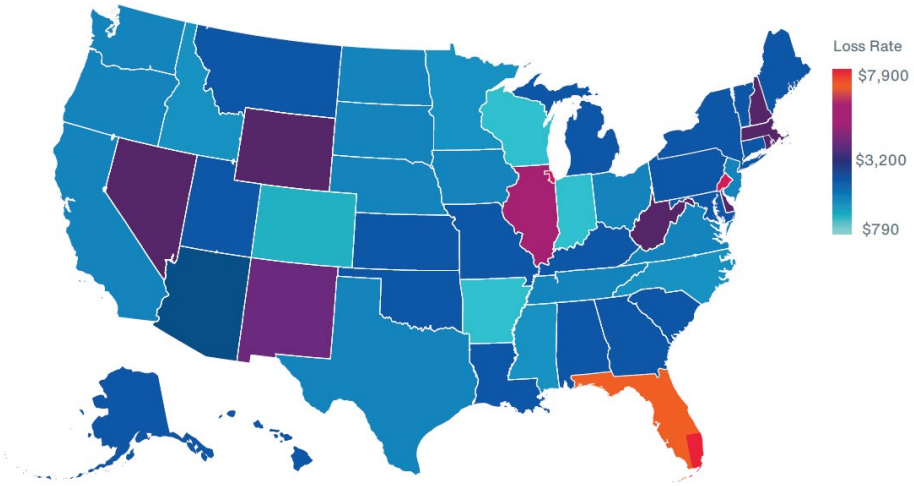
***Hamby v. Joshua Glauser, D.O.*,** Case No. 2021-CA-002579 (Fla. 15th Cir. Ct. 2023). Claims that a doctor was negligent in his treatment of a patient's bout of pancreatitis resulted in an award of more than $20 million, including **$9 million** for the patient's widow and **$11 million** for his son in noneconomic damages.

Santos v. A Place to Grow, LLC, Case No. 29-2022-CA-000927-A001HC (Fla. 13th Cir. Ct. 2023). In possibly one of the largest verdicts awarded in a case involving a Florida assisted living facility, a jury awarded a plaintiff whose mother died from sepsis **$12.5 million** in noneconomic damages.

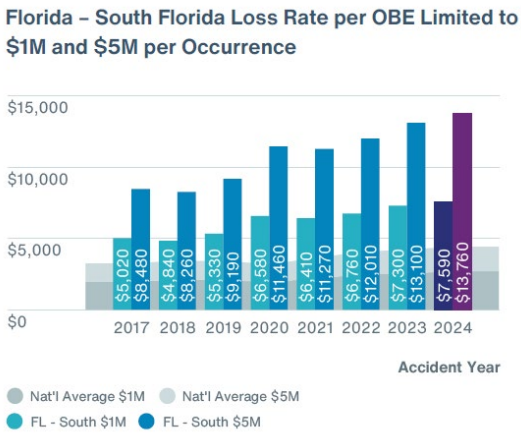
Stewart v. Florida Health Science Center d/b/a Tampa General Hospital, Case No. 22-CA-004625 (Fla. 13th Cir. Ct. 2025). In this case originating from a claim that a hospital should have but failed to order a CT scan, the jury awarded the plaintiff $71 million in damages, including **$51 million in noneconomic damages** for the plaintiff's pain and suffering.

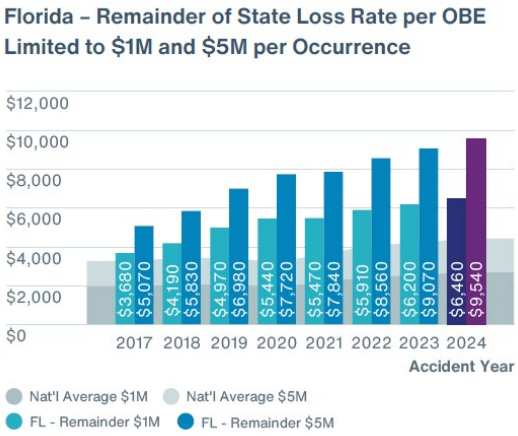
Florida Leads the Country in Medical Negligence Costs, Leading to an Impending Physician Supply-and-Demand Problem

Since Florida's aggregate caps on noneconomic damages were struck in 2014, medical and hospital professional liability claims costs have been increasing, particularly in South Florida. A key finding of a benchmark study conducted by Aon and the American Society for Health Care Risk Management ("ASHRM") determined that, although the frequency of hospital and physician professional liability or medical professional liability claims has remained relatively stable in recent years, the *severity* of claims—including indemnity and defense costs per claim—is steadily increasing.[8] When focused on hospital professional liability claims in particular, Florida stands alone based on projected 2025 loss rates (limited to $1 million per occurrence),[9] with South Florida (Broward, Miami-Dade, and Palm Beach counties) likely to produce projected loss rates exceeding $7,500 per occupied bed equivalent,[10] the highest in the nation, with the remainder of Florida not far behind.[11]

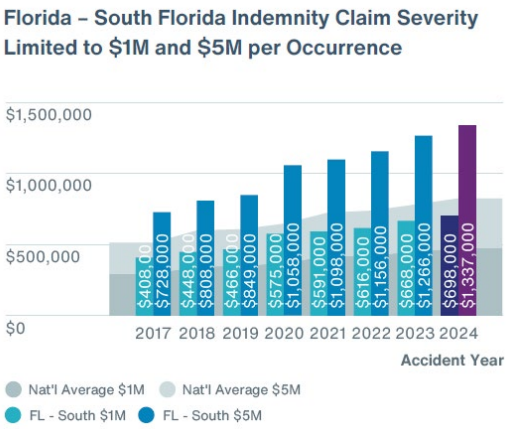


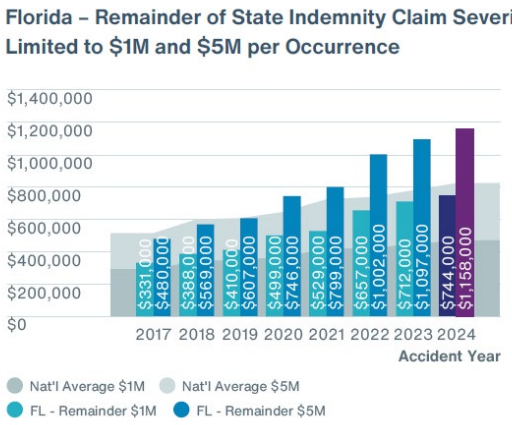
As the next two graphs show, while the national average loss rate per occupied bed equivalent ("OBE") has remained relatively steady, the same loss rates in Florida have continued to climb each year, with the average loss rate in 2024 doubling or even tripling the national average.[12]



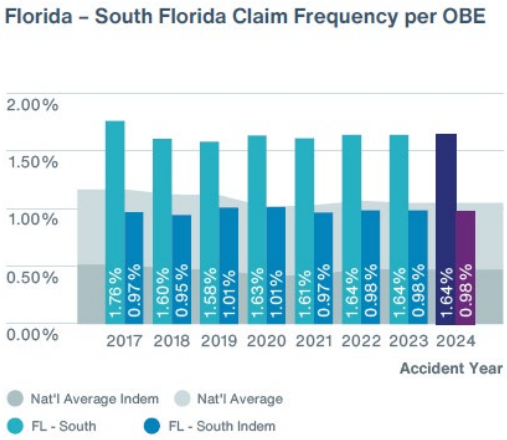


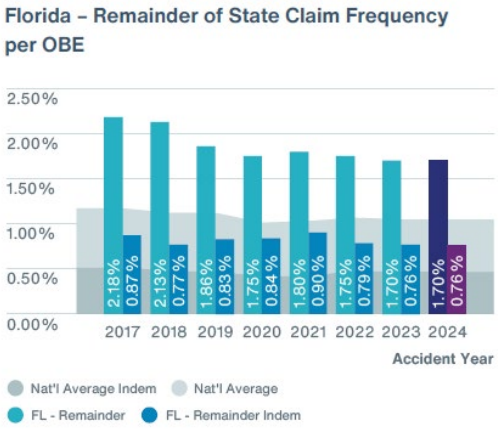
The average severity of such claims in Florida—i.e., the ultimate dollar loss associated with the claim[13]—also outpaces the national average by a wide margin. The severity of indemnity claims made in South Florida is more than *$300,000 higher per occurrence* as compared to the national average, and the severity of indemnity claims made in the rest of the state is also higher than the national average, as the next two graphs demonstrate.[14]





The frequency of total claims per OBE in Florida—both in South Florida and in the remainder of the state—remains much higher than the national average, although indemnity claims are within the average:



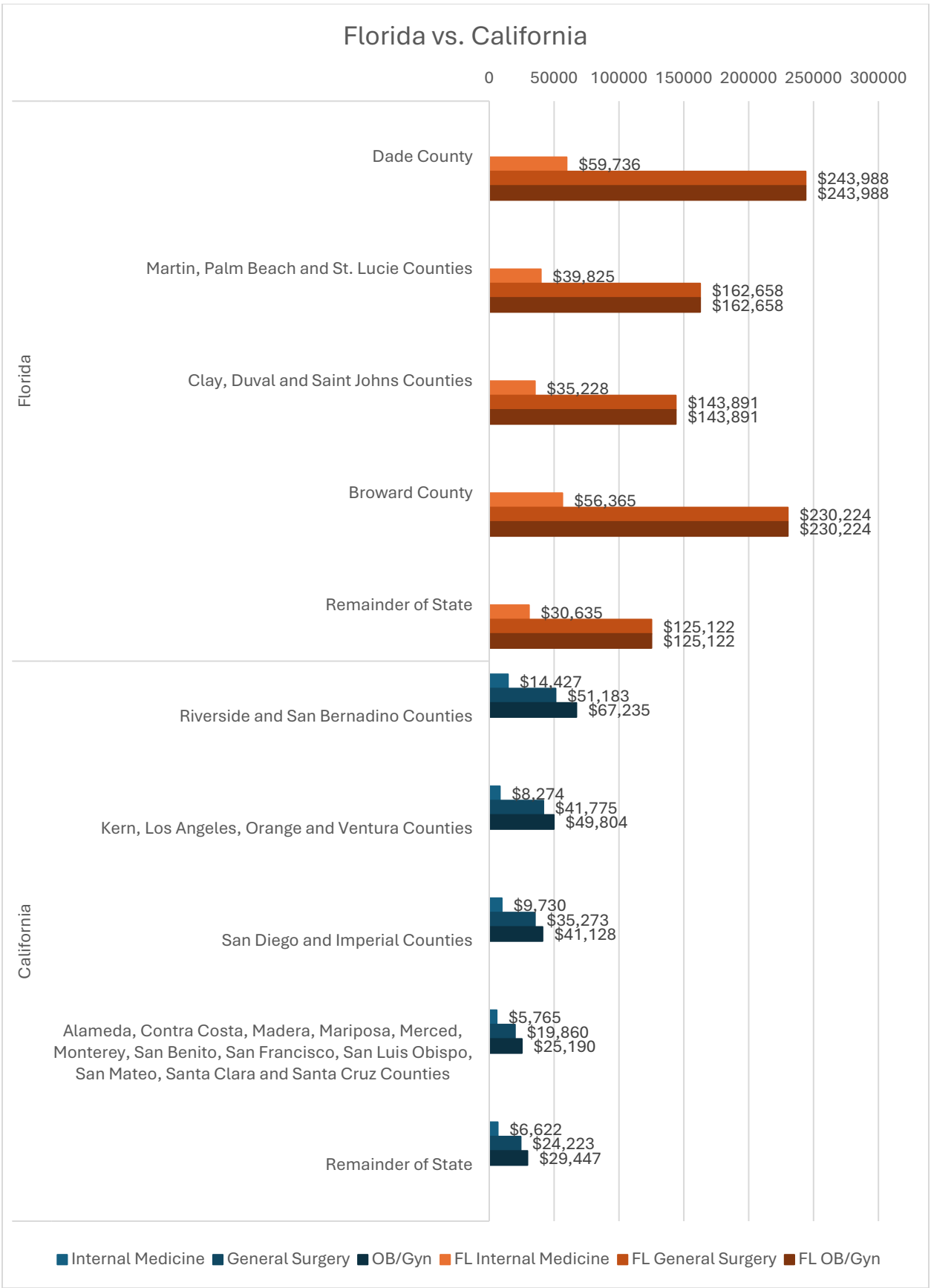


This hospital professional liability data is particularly important to consider as hospitals are often the target for medical negligence claims. Most physicians have relatively low insurance limits; hospitals, however, have higher coverages—often in the tens of millions of dollars—with additional assets. As a result, medical negligence lawsuits are often filed not just against the physician or other healthcare provider that directly rendered the allegedly negligent care, but the hospital at which the care was provided, as the hospital is perceived to be—and often is—the deeper pocket.

At the same time overall claims costs are increasing, so too are medical negligence insurance premiums. The Medical Liability Monitor publishes an annual rate survey issue, which reflects survey responses by the major writers of professional liability insurance for physicians. According to the Medical Liability Monitor's October 2024 survey, Florida has experienced a

notable 4.7% increase in premiums, surpassing the regional average increase of 2.1%.[15] This surge in premiums, coupled with the rising costs of claims, presents a significant challenge.

The Medical Liability Monitor also catalogues examples of manual rates from the major insurers for specific mature, claims-made specialties with limits of $1 million per claim with a $3 million aggregate, by far the most common limits, across three specialties, general surgery, obstetrics/gynecology, and internal medicine. As one example, the Doctors Company's[16] manual rates are astronomically higher in Florida than they are in other states—particularly when compared against municipalities in states which cap medical negligence damages and that are larger than Florida, like California and Texas.[17]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Martin, Palm Beach and St. Lucie Counties
$39,825
$162,658
$162,658
Clay, Duval and Saint Johns Counties
$35,228
$143,891
$143,891
Broward County
$56,365
$230,224
$230,224
Remainder of State
$30,635
$125,122
$125,122
California
Riverside and San Bernadino Counties
$14,427
$51,183
$67,235
Kern, Los Angeles, Orange and Ventura Counties
$8,274
$41,775
$49,804
San Diego and Imperial Counties
$9,730
$35,273
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Internal Medicine
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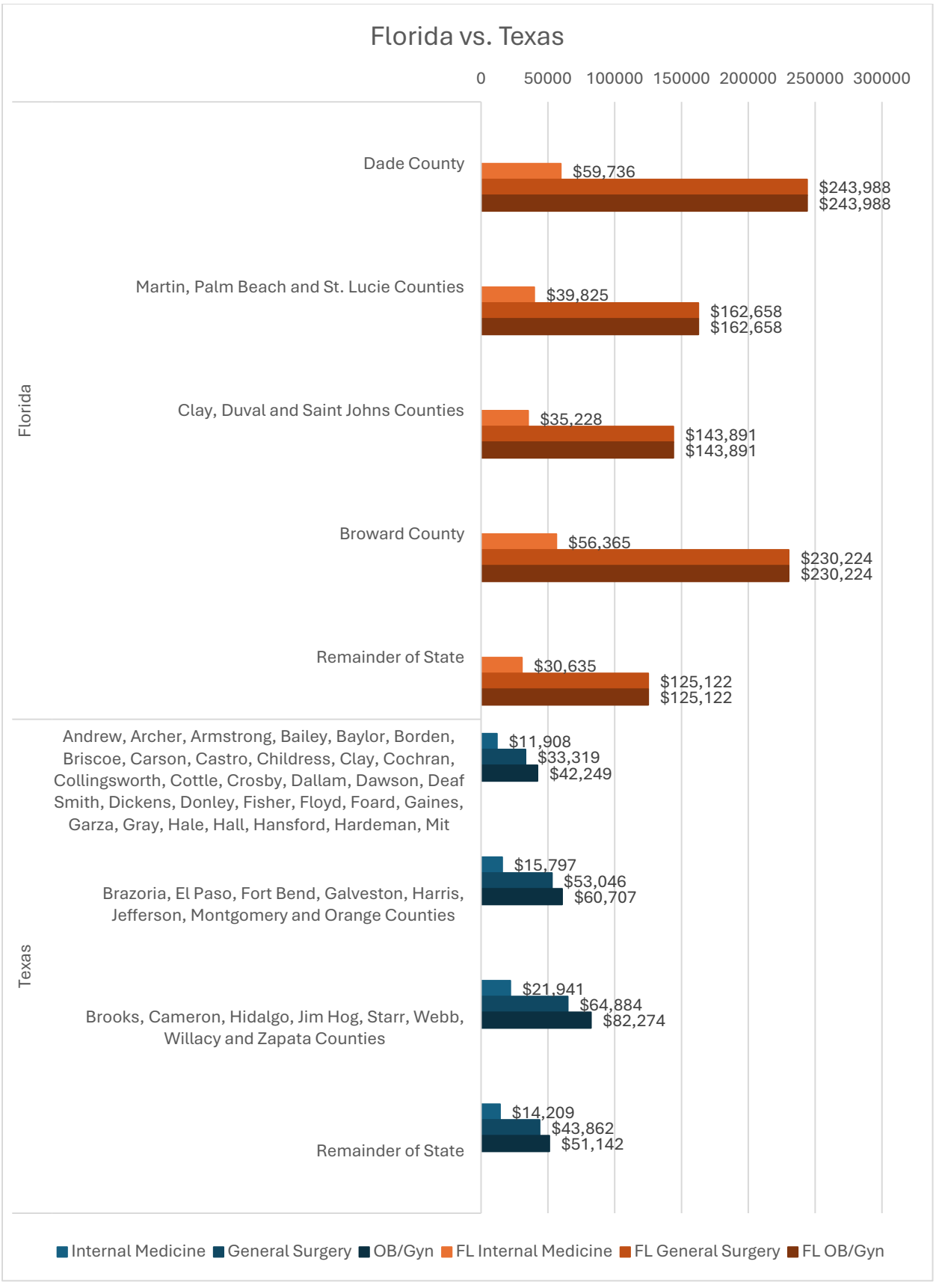
OB/Gyn
FL Internal Medicine
FL General Surgery
FL OB/Gyn


Florida vs. Texas
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Dade County
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Martin, Palm Beach and St. Lucie Counties
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Broward County
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Remainder of State
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$125,122
Texas
Andrew, Archer, Armstrong, Bailey, Baylor, Borden, Briscoe, Carson, Castro, Childress, Clay, Cochran, Collingsworth, Cottle, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Gaines, Garza, Gray, Hale, Hall, Hansford, Hardeman, Mit
$11,908
$33,319
$42,249
Brazoria, El Paso, Fort Bend, Galveston, Harris, Jefferson, Montgomery and Orange Counties
$15,797
$53,046
$60,707
Brooks, Cameron, Hidalgo, Jim Hog, Starr, Webb, Willacy and Zapata Counties
$21,941
$64,884
$82,274
Remainder of State
$14,209
$43,862
$51,142
Internal Medicine
General Surgery
OB/Gyn
FL Internal Medicine
FL General Surgery
FL OB/Gyn

Increased claims costs and increased premiums have very real and significant implications for physicians' decisions regarding their ongoing practice of medicine in Florida, particularly in high-risk specialties like obstetrics. As the Florida Department of Health reported in 2023, *over 21 percent* of the 2,340 obstetricians in Florida who responded to survey questions plan to discontinue providing obstetric care within two years, with "[t]he most frequently selected reasons pertain[ing] to retirement, liability exposure, [and] high medical malpractice litigation," among others.[18] Even in 2023, only about 60 percent of the state's obstetricians were performing deliveries.[19] While the supply of practicing obstetricians decreases, demand will only increase, with one report finding that Florida needs *500 more* obstetricians by 2035 to keep up with the growing population[20]—a staggering statistic that does not account for the fact that approximately *512* obstetricians already indicated their intent to leave their practice within two years. But obstetrics is only one example. As an IHS Markit report forecasted, "[s]igns indicate that a significant shortage [of physicians] is looming," despite efforts to increase programs designed to incentivize the creation of new residency slots.[21]

To Achieve Medical Negligence Reform, the Legislature Should Afford an Opportunity for the Recovery of Reasonable Noneconomic Damages and Expand the Class of Eligible Survivors

In response to these escalating costs and liability concerns, implementing caps on recoverable damages in medical negligence claims emerges as a viable strategy to moderate claim values if the Legislature also desires to expand the class of survivors eligible to recover in medical negligence. A recent analysis of states with and without caps reveals that caps provide a generally positive effect on controlling average claims costs. This impact is particularly pronounced in states with "small caps," defined as $500,000 or less, and minimal exceptions.[22] This approach suggests a pathway to mitigating the financial pressures on the healthcare system, maintaining a fair and balanced legal framework for addressing medical negligence, and disincentivizing excessive filing of otherwise unwarranted lawsuits in pursuit of exorbitant damages.

Importantly, legislation pairing per-claimant caps with the repeal of section 768.21(8) would likely withstand constitutional challenge.

First, the proposed caps are not arbitrary because they provide a commensurate benefit to survivors. Specifically, the legislation would end the longstanding prohibition on the recovery of noneconomic damages by certain survivors in medical negligence cases. This would ensure all survivors in wrongful death actions are eligible to recover the same types of damages, addressing concerns that the law as it stands today unduly discriminates against certain claimants.

Second, the legislation would impose only per-claimant caps. The focus in the Florida Supreme Court's *McCall* decision was the fact that the statute's aggregate caps "discriminated" based on the number of survivors. The legislation would address that by capping survivors' damages equally. A claimant's recovery would not be reduced simply based upon the number of survivors who are entitled to recovery. And no matter the level or type of injury, the cap would be the same for any claimant; thus, the legislation would not create different "classes" of claimants based on whether, for example, the medical negligence caused a vegetative state.

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Florida remains in a medical negligence crisis, with little relief on the horizon. Given the hurdles the state already faces, now is not the time to expand the class of survivors that may recover in medical negligence actions, as HB 6003 proposes to do. For all these reasons, the Institute opposes HB 6003. The Institute would only support the legislation if it paired expansion of liability with reasonable limits on noneconomic damages.

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[1] 134 So. 3d 984 (Fla. 2014).
[2] *Id.* at 901, 905.
[3] *Id.* at 916 (Pariente, J., concurring in result).
[4] *N. Broward Hosp. Dist. v. Kalitan*, 219 So. 3d 49, 56 (Fla. 2017).
[5] *Id.* at 57.
[6] *Id.*
[7] Data on file with the Florida Justice Reform Institute.
[8] Aon/ASHRM Hospital and Physician Professional Liability Benchmark Analysis at 10 (Oct. 2024) [hereinafter AON/ASHRM Study].
[9] Per the AON/ASHRM Study, "Loss Rate" is defined as the "annual ultimate loss dollars per [occupied bed equivalent] or per Class 1 physician equivalent." "Occupied Bed Equivalent" is a "standard measure of the overall hospital professional liability risk comprising a weighted contribution from twelve hospital volume metrics." A "Class 1 Physician Equivalent" is a "standard measure of the physician professional liability risk based on the exposure represented by one full-time Family Practice (no surgery) physician over the course of one year." Aon/ASHRM Study at 5.
[10] Again, "Occupied Bed Equivalent" is a "standard measure of the overall hospital professional liability risk comprising a weighted contribution from twelve hospital volume metrics." Aon/ASHRM Study at 5.
[11] Aon/ASHRM Study at 14. This analysis is also further limited to loss rate per occupied bed equivalent of up to $1 million per occurrence in order to reduce the influence of outlier claims.
[12] Aon/ASHRM Study at 67-68.
[13] The Aon/ASHRM Study defines severity to mean "average loss per claim, where loss comprises indemnity and defense costs." AON/ASHRM Study at 5.
[14] AON/ASHRM Study at 67-68.
[15] Medical Liability Monitor, Vol. 49, No. 10, at 3 (Oct. 2024).
[16] The Doctors Company is the "nation's largest physician-owned medical malpractice insurer." *See* The Doctors Company, https://www.thedoctors.com/about-the-doctors-company/.
[17] The charts that follow are sourced from information provided in the Medical Liability Monitor, Vol. 49, No. 10 at 1-2, 6-48 (Oct. 2024).
[18] Florida Department of Health, *2023 Florida Physician Workforce Annual Report* at 43-44 (Nov. 1, 2023), https://www.floridahealth.gov/provider-and-partner-resources/community-health-workers/HealthResourcesandAccess/physician-workforce-development-and-recruitment/2023DOHPhysicianWorkforceAnnualReport-FINAL1.pdf.
[19] *Id.* at 42.
[20] IHS Markit, *Florida Statewide and Regional Physician Workforce Analysis: 2019 to 2035* at 10 (Dec. 2021), https://fha.org/common/Uploaded%20files/FHA/Florida-Physician-Workforce-Analysis.pdf.
[21] *Id.* at 1.
[22] *An Analysis on How Caps on Medical Malpractice Claims Have Restrained Claim Values by State* in Aon/ASHRM Study at 24-29.