



North Dakota Association for Justice
PO Box 365
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The Trial Lawyers of North Dakota

Jaclyn Hall, Executive Director
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Chairman Klemin and members of the House Judiciary Committee, my name is Jaci Hall, Executive Director of the North Dakota Association for Justice. I am here in support of HB1349.

In 1991, the ND Legislature created a task force to analyze the ND Healthcare system. The task force was asked to do the following:

1. Increase access
2. Control Costs
3. To maintain or increase quality of healthcare across the state

In the end, the task force capped noneconomic damages at \$250,000 – later raising it to \$500,000 to support those with serious injuries from the negligence of medical professionals. In 1995, this cap was passed by the North Dakota Legislature. That was 30 years ago.

Today, we are here to ask this committee and the North Dakota Legislature to support our request to increase the cap established in 1995 to the current value of money this year and create a gradual increase over the next three years to account for the inflationary costs associated with living.

Our initial request was to increase the amount to 3 million, but after our discussion with medical partners, we realized our request was too much, too soon and so we believe an incremental increase to 2 million supports the lives of those who fell victim to poor medical care.

When someone is injured due to medical negligence, their lives are changed forever. Their damages are determined by a jury of one's peers. This right is guaranteed by the 7th Amendment. Damages are awarded as an attempt to restore someone's life after the negligence occurs.

Under NDCC 32-03.2

- a. **Compensation for economic damages**, which are damages arising from medical expenses and medical care, rehabilitation services, custodial care, loss of earnings and services, loss of employment or business or employment opportunities and other monetary losses. An injured party can receive past and future economic damages.



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- b. **Compensation for noneconomic damages**, which are damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, fear of injury, loss or illness, loss of society and companionship, loss of consortium, injury to reputation, humiliation, and other nonpecuniary damages.

Raising non-economic damage caps in medical negligence cases can be argued for several reasons:

1. **Fair Compensation for Victims:** Non-economic damages, like pain and suffering, emotional distress, or loss of quality of life, are deeply subjective and personal. Capping these damages can limit fair compensation for individuals who endure significant, life-altering consequences from medical negligence. Raising the caps ensure victims are properly compensated for the harm they experienced.
2. **Reflecting Inflation and Changing Values:** The amount set for this cap 30 years ago does not account for inflation or the rising costs of living. What was considered enough for non-economic damages in 1995 is insufficient to cover the physical and emotional suffering victims endure today.
3. **Encouraging Accountability in Healthcare:** Increasing non-economic damage caps might encourage hospitals and healthcare professionals to take greater care in preventing medical errors. By providing checks and balances, hospitals can improve safety protocols, reducing the likelihood of negligence. Medical negligence claims do not happen often, but when they do we need to ensure changes happen to ensure this act does not happen again.
4. **Addressing the Disparity Between Economic and Non-Economic Losses:** In some cases, economic damages (like lost wages and medical costs) are straightforward and easier to calculate. However, non-economic damages can be far more significant but are often reduced or virtually eliminated due to this cap. You trust a jury of your peers to determine what your damages are, only to have them taken away by the government oversight.



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5. **Ensuring Access to Justice for All:** In North Dakota, victims of medical negligence are not able to recover a meaningful amount of compensation for their pain and suffering, leaving them with inadequate resources to cope with long-term consequences. Economic damages will pay for their medical bills, but who will pay to help them restore their life?
6. **Addressing Public Perception and Trust:** If a jury believes they have taken the time to provide a conservative amount to a victim and the non-economic damages are unfairly capped without their knowledge, everyone loses trust in the legal system. A jury verdict should be adequate to compensate victims for the harm done.

Healthcare costs have risen significantly since the 1990s, reflecting broader economic trends such as inflation, technology and advances in healthcare. For instance, health care premiums have risen over 500% (\$4,000 - \$20,000) which is outpacing even inflation. Out-of-pocket costs have also increased significantly, causing individuals and families to choose whether they can afford prescriptions or copays. Hospital and procedure costs ranged from \$1,000 - \$2,000 per day in the 1990s and now a stay can range from \$ 4,000 to \$5,000 a day – and over \$20,000 a day for ICU.

Our cost of living has also increased significantly. In the 1990s, home costs were in the low \$100,000s, with rent being around \$500 to \$700 a month. Now, the average cost of a home is around \$350,000 and renters can pay over \$2,000 a month for an apartment. In the 1990s, a family would spend between 10 to 15% of their income on groceries, now a family will spend at minimum 25% of their income. In the end, major expenses like housing, essentials and healthcare have outpaced wage growth, making it more difficult to maintain an individual's standard of living.

In Conclusion, raising non-economic damage caps is grounded in fairness, justice, and the recognition that the consequences of medical negligence extend beyond just their medical bills. These individuals had faith in their physician and medical facility, and they failed them. By capping their ability to restore their life after it was irreparably damaged – you are justifying the



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negligence of the physician and healthcare facility and telling the victim their life does not matter.

Physicians and healthcare providers will tell you that they believe the cap is fair and just, but they are not the ones whose lives have been changed dramatically. In Minnesota, there are no caps on these types of damages – and their healthcare facilities, especially the Mayo Healthcare system – have continued to flourish.

In North Dakota, we have new hospitals and clinics opening and many current facilities are expanding to meet the needs of patients. Increasing this cap will not decrease access to medical care in our communities nor will it reduce the number of medical providers. This will just support a victim when the unthinkable happens.

I urge the committee to vote for a Do Pass on HB1349, with the adjusted amount. These victims deserve to have their life restored, and these caps do not restore their life.