



**2025 HB 1349**  
**House Judiciary Committee**  
**Representative Lawrence Klemin, Chairman**  
**February 3, 2025**

Chairman Klemin and members of the House Judiciary Committee, I am Melissa Hauer, General Counsel/VP, of the North Dakota Hospital Association (NDHA). I am here to testify in opposition to House Bill 1349 and ask that you give the bill a **Do Not Pass** recommendation.

If passed, this bill would make North Dakota an extreme outlier in medical malpractice damages caps and impose additional costs on our health care system. Currently, twenty-nine states have a cap on medical malpractice damages. These caps were part of medical malpractice tort reform across the country. Some states cap all damages that may not be exceeded in medical malpractice lawsuits. Most states, however, do as North Dakota has done and cap only noneconomic (pain and suffering) damages. Economic damages (financial losses like lost wages, medical bills) are unlimited.

This bill is an aggressive restructuring of our noneconomic damages cap in medical malpractice cases that is unprecedented anywhere in the country. It would raise the cap from the current \$500,000 to \$3 million. If this bill passes, North Dakota will have by far the highest economic damages cap in the country – higher than California, New York, or any other state. Our current cap is similar to that of two of our bordering states – Montana at \$250,000 and South Dakota at \$500,000 – as well as many other states that have a cap such as Texas, which recently lowered its cap to \$250,000.

It is important to keep in mind that noneconomic damages are different than economic damages. Noneconomic damages compensate for injuries that are difficult to quantify, such as pain and suffering, emotional distress, and disfigurement. These are the only damages capped in our state. Plaintiffs can recover unlimited economic damages in medical malpractice cases. In other words, there is no limit on the amount of damages a jury may award for economic damages for financial losses, such as medical bills, lost wages, and earning capacity.

The current cap was set by the legislature in 1995 after an extensive five-year health care study by a task force created to analyze and make recommendations for improvements to North Dakota's health care system. The goals of the task force were to increase access; control costs; and to maintain or increase quality of health care in the state. Initially, the legislature considered capping noneconomic damages at \$250,000, but approved \$500,000 instead to provide more equity for seriously injured individuals who did not have significant wage losses to recoup. One of the stated purposes of the cap was to stabilize the risk for insurance providers which would potentially have a beneficial effect on premiums. As you will hear from the others who testify in opposition today, the cap also serves the goals of promoting competent medical and hospital services at reasonable costs, the allowance of adequate compensation for patients with meritorious claims, and the encouragement of physicians and other health care providers to practice medicine in North Dakota.

In addition to increasing the cap six-fold, the bill has other concerning provisions. It would dramatically change how the noneconomic damages cap applies. Currently, the noneconomic damages cap applies regardless of the number of claims or defendants (health care providers such as doctors, nurses, physician assistants, nurse practitioners, etc.) sued in the case. The bill language would instead allow the cap to apply per defendant and per claim. For example, if a plaintiff sued one physician and two nurses, the cap would be \$9 million (\$3 million x 3 defendants). Plaintiffs will be incented to name as many defendants as they can in order to increase the cap. This extensive increase will mean certain increases in defense costs and the cost of professional liability insurance. Hospitals will be forced to buy additional insurance, no matter their size, to account for a much higher, and more uncertain, cap. That comes at a significant cost – one that may be simply unaffordable to smaller hospitals that already operate on extremely narrow margins.

In summary, expanding the cap will lead to the risk of more health care providers being named in lawsuits and the potential for higher payouts in malpractice lawsuits. This will lead to increased insurance premiums for health care providers, which in turn results in higher health care costs for everyone. It will discourage some doctors, nurses, and other health care professionals from practicing in our state and draw them to other states with lower caps. For these reasons, we oppose the bill and ask that you give it a **Do Not Pass** recommendation. I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP  
North Dakota Hospital Association