

2025 HOUSE JUDICIARY

HB 1349

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1349
2/3/2025

A BILL for an Act to amend and reenact section 32-42-02 of the North Dakota Century Code, relating to liability limits for health care malpractice actions or claims; to provide an effective date; and to provide an expiration date.

9:30 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Representative S. Olson

Discussion Topics:

- Recent North Dakota medical negligence trials
- Medical negligence trial fees
- Establishment of standard of care
- Increase in cost of healthcare

9:30 a.m. Representative Ben Koppelman, North Dakota Representative for District 16, introduced the bill.

9:36 a.m. Jaclyn Hall, Executive Director for the North Dakota Association for Justice, testified in favor and provided testimony #33666.

9:57 a.m. Emily Cowan, Independent, testified in favor and provided testimony #33863.

10:10 a.m. Nashel Rick, Independent, testified in favor and provided testimony #33743.

10:15 a.m. Melissa Hauer, General Counsel/VP of the North Dakota Hospital Association, testified in opposition and provided testimony #33771.

10:30 a.m. Tracy Kolb, Lawyer in North Dakota, testified in opposition and provided testimony #33677.

10:48 a.m. Courtney Koebele, Executive Director of the North Dakota Medical Association, testified in opposition and provided testimony #33495.

10:48 a.m. Gerald Zarlengo, Copic, testified in opposition and provided testimony #33630.

10:56 a.m. Arik Spencer, President and CEO of the Greater North Dakota Chamber, testified in opposition and provided testimony #33820.

10:58 a.m. Joel Larson, General Counsel at Altru Health System, submitted testimony in opposition #33632.

Additional written testimony:

Erik Christenson, Heart of America Medical Center, submitted testimony in opposition #33284

Hannah Brossart, Associate Dentist at Rugby Dental, submitted testimony in opposition #33402

Randall Hanson, Grand Forks, North Dakota, submitted testimony in opposition #33472

Richard Reid, Chief Executive Officer at Langdon Prairie Health, submitted testimony in opposition #33546

Nikki Wegner, North Dakota Long Term Care Association, submitted testimony in opposition #33660.

Reir Thompson, Independent, submitted testimony in opposition #33825

10:59 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk



HEART OF AMERICA
MEDICAL CENTER

Heart of America Medical Center
2975 Hwy 2 east
Rugby, ND 58368
(701) 776-5261

January 31, 2025

Judiciary Committee

600 East Boulevard Avenue
Bismarck, ND 58505

Subject: Opposition to HB 1349 – Noneconomic Damages Limited

Dear Committee Members,

I am writing to express my strong opposition to HB 1349, which proposes lifting the current cap on non-economic damages in medical malpractice cases. While I understand the intent to provide fair compensation for patients, this bill poses a serious threat to the stability of rural health care systems without providing any significant benefit to our patients or communities. In fact research has provided strong evidence that increased litigation does not increase the safety or quality of health care. (Mello, 2020)

Rural hospitals and clinics already face financial challenges, including workforce shortages and limited resources. Increasing liability costs due to higher non-economic damage awards will likely lead to skyrocketing malpractice insurance premiums. This burden could force rural providers to reduce services, increase patient costs, seek ownership from larger organizations, or even close their doors entirely, leaving already underserved communities with even fewer health care options. Please consider the significant loss of OB services in our rural communities due to litigation costs and concerns. Now apply this service loss to acute care, surgical, or ER services. The results will likely be very detrimental to our population. Furthermore, any actions that adversely affect the lives and work of health care workers will surely lead to more and more professionals choosing to leave their professions. This will enhance the already critical health care worker shortage.

Maintaining reasonable limits on non-economic damages helps ensure that rural health care facilities remain viable, and able to attract and retain essential medical professionals. For these reasons our sister states such as Montana and South Dakota have such caps in place. (Montana Code, 2023) Without these protections, our most vulnerable populations may struggle to access timely and quality care. Health care is a vital service and a noble calling. Please work to protect these services and help ensure that they are available at a reasonable level for generations to come. Finally, the goals put before health care professionals and legislators alike are to ensure available and quality health care and controlled costs to society. This proposed legislation does the opposite in that it does not improve quality, harms availability, and increases costs for society.

I urge you to oppose HB 1349 and support policies that strengthen, rather than weaken, rural health care. Thank you for your time and consideration.

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Heart of America Medical Center
2975 Hwy 2 east
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(701) 776-5261

Sincerely,

Erik Christenson
CEO

References:

Montana Code (2023). Medical Malpractice Noneconomic Damages Limitation. Retrieved from: [25-9-411. Medical malpractice noneconomic damages limitation, MCA](#)

Mello, M.M., et al. (2020). Malpractice Liability and Health Care Quality: A Review. *JAMA*. Jan 28;323(4):352-366.

**Medical Clinics: Rugby (701) 776-5235, Dunseith (701) 244-5694, Maddock (701) 438-2555
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Dr. Hannah Brossart
Rugby Dental Office
201 7th St. SW Suite 1
Rugby, ND 58368

February 1, 2025

Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Subject: Opposition to HB 1349 - Noneconomic Damages Limited

Dear Committee Member,

I am writing to express my strong opposition to House Bill 1349 (HB 1349) and urge you to vote against it. After reviewing the contents of the bill, I have several concerns that I believe should be addressed before any further action is taken.

I am an associate dentist in Rugby, ND. This is a rural community with two dentists and a critical access hospital with several medical providers.

My concerns with HB 1349 include:

1. **Concern #1:** Decrease in providers in an already underserved community.
 - The proposed changes could have serious negative consequences on rural communities. Research has shown that non-economic damage caps increase the supply of young, high-risk physicians. (Pesko et al., 2017) By removing these malpractice limits, it would further remove access to care in communities that are already underserved.
2. **Concern #2:** Increase in malpractice premiums.
 - The increase in malpractice premiums may lead to providers relocating to states that have non-economic damage caps in place. Instead of helping compensate patients for injuries, it would punish providers who were not negligent. (Localio et al., 1991) This would once again increase the need in already underserved communities.

Furthermore, I believe we can find alternative approaches that could address the intended goals of HB 1349 without the negative consequences I outlined.

In conclusion, I urge you to oppose HB 1349. I believe that through careful consideration and constructive dialogue, we can find solutions that will better serve our community.

Thank you for your time and attention to this important matter.

Sincerely,



Hannah Brossart, DDS

1. Pesko MF, Cea M, Mendelsohn J, Bishop TF. The effects of malpractice non-economic damage caps on the supply of physician labor: Heterogeneity by physician age and risk. *International review of law and economics*. June 2017. Accessed February 1, 2025. <https://pmc.ncbi.nlm.nih.gov/articles/PMC5675024/>.
2. Localio AR, Lawthers AG, Brennan TA, Laird NM, Hebert LE, Peterson LM, Newhouse JP, Weiler PC, Hiatt HH. Relation between malpractice claims and adverse events due to negligence. Results of the Harvard Medical Practice Study III. *N Engl J Med*. 1991 Jul 25;325(4):245-51. doi: 10.1056/NEJM199107253250405. PMID: 2057025.

Scott D. Jensen
 Timothy R. Dittus
 Randall S. Hanson
 Mark A. Grainger
 Nicholas S. Stromsodt*
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PARALEGALS

Sue L. Schaumburg - CP
 Tiffany L. Hrnecir
 Frances M. Kanneh
 Collin D. Longo

January 31, 2025

House Judiciary Committee

Re: HB 1349

I write today to demonstrate why the amendments to section 32-42-02 of the North Dakota Century Code embodied in House Bill 1349 are bad policy for the State of North Dakota and the bill should be defeated.

I am an attorney in the State of North Dakota and have practiced in the area of professional negligence since I began my career in 1991 with a significant majority of my practice defending hospitals and physicians against medical malpractice cases. I practice both in North Dakota and in Minnesota and have experience with medical malpractice cases in both states. Minnesota is one of the very few states in the Country which does not have a cap on non-economic damages. As a result, there is a vast difference in defending cases in Minnesota and those in North Dakota. There is a vast difference in trying to resolve cases in North Dakota and Minnesota. This bill would reshape North Dakota professional liability law and insurance requirements to make us look like Minnesota and the New England states.

Other than Minnesota, all states around us and most states across the country have a non-economic cap at or less than the \$500,000 cap which we presently have in North Dakota. This bill would make North Dakota one of the most liberal states relative to medical malpractice claims in the country. We will have out of state attorneys clamoring to bring claims here due to the fact that it would be one of a minority of states that do not limit the potential for runaway verdicts. That is not a change you want to make. The states that do not have caps are predominantly the New England states, along with Minnesota, Kentucky, Arizona, Alabama, Arkansas, and Wyoming. Many or most of those states had caps that were struck down based on their own state Constitution, but those legislatures that put them in place initially certainly felt that caps were appropriate and those caps were predominantly in the range of what North Dakota has before they were struck down. Our Supreme Court has already addressed the issue and found that the cap on non-economic damages is in fact appropriate under the North Dakota Constitution and therefore not at issue here. The remainder of the Country all have caps in place of some variety, even including California that caps non-economic damages at \$750,000. The vast majority of states with non-economic caps place those caps between \$250,000 and \$500,000. There are some states that are at \$750,000 and a few even have total caps including economic losses to completely cap potential losses to health care providers. Other than those that have no caps, no states have anything that looks like what House Bill 1349 would do to the litigation landscape in North Dakota. North Dakota has never been a state that has chosen to set itself apart to be the

choice for forum shopping to bring more lawsuits into the state. That is the unequivocal unintended consequence of this bill. While more litigation may be advantageous for those in my position, who are paid to defend those claims, it is not good for the State and certainly not good for our health care system.

It must also be remembered that the attempt to raise the cap by 500 percent is only one portion of this bill. It also eliminates the language that the cap applies collectively to all medical Defendants. The effect of this language operates to essentially eviscerate the cap altogether and encourage naming not only the hospital or health care institution, but also naming each and every physician, nurse, or other health care provider in the litigation. This would be done to take advantage of the fact that each individual provider under this proposed bill would have their own multi-million dollar cap. Every lawsuit would result in naming numerous providers in an effort to circumvent the cap altogether. At a bare minimum, the hospital or clinic and the provider would be named individually to double the cap on non-economic damages. This scheme virtually guarantees that numerous care providers, including multiple nurses and physicians, will be directly named in every lawsuit. It would be hard to imagine a greater disincentive for doctors and nurses to move to North Dakota as a medical provider than that. This bill will result in a severe chilling effect for recruitment of health care providers – and, in spite of claiming to be a cap, the multitudinal aspect of the cap, will essentially eliminate having a cap altogether. That is how the bill will operate in real terms.

For those not trained in the law, it must be remembered that compensation for non-economic damages is not an age old concept. Historically, there was no ability to recover for these kinds of damages. That is a recent addition in terms of historical jurisprudence. Part of the reason for that is that there is no good way of quantifying non-economic losses. We provide juries with instructions from the Court that generally describe their obligation and what to consider. The pattern jury instruction given by most Court to juries is civil Jury Instruction 70.35:

The term "non-economic damages" includes damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, fear of injury, fear of loss, fear of illness, loss of society and companionship, loss of consortium, and humiliation.

Compensation for non-economic damages such as pain, suffering, physical impairment, disfigurement, mental anguish, emotional distress, fear of injury, fear of loss, fear of illness, and inconvenience is measured by the reasonableness of the award in the light of all the circumstances of the case. In considering the reasonableness of an award, you may consider whether the element of damage is temporary or permanent and whether in the future it can or will be averted or relieved.

That is the entire sum and substance of guidance that we give to the jury and then charge them with coming up with a number. With economic damages, there are concrete objectively verifiable numbers that can be used, including costs of medical care, loss of wages, and finite costs that can be demonstrated and are predictable. As shown by the guidance given to juries listed above, there is virtually no guidance and no predictability. There is no method of insuring consistency in any respect. A prime example is in the State of Minnesota less than two years ago, where a Federal District Court verdict came back on a case of medical malpractice against a medical provider in St. Cloud, Minnesota for over \$110 million – on an orthopedic injury that did not involve the loss of a limb. A recent case in North Dakota occurred in Williston where the cap was utilized to reduce a

\$2.36 million non-economic award on a toe case. Those aberrant results lead other claimants to believe that they are automatically entitled to whatever the cap is in every case – because there is no consistent, verifiable method of discussing what should be awarded. That is precisely the reason that states across the country have utilized a non-economic cap in medical cases that is at or below what we have in this state at the present time – and nowhere near the levels that are proposed in HB 1349.

It is not easy to attract medical providers into the State of North Dakota. We have a shortage of physicians, nurses, midlevel providers, and others. One of the best incentives we have to attract specialty physicians is that, unlike being in Minneapolis, New York, or Philadelphia, we have a less litigious society here with laws that are either favorable to physicians practicing in this state or, at a minimum, not worse than any other states. This bill ends that. It would place North Dakota at risk of being one of the worst states to practice medicine in as it relates to risk and insurance requirements. Add that to the fact that we already struggle to attract specialty physicians due to geographical, cultural, and weather issues, and hospitals will find it very difficult to obtain staffing necessary to care for the people in our state. It is a problem now, but will be demonstrably worse with the passage of this bill, making the legal climate for practicing medicine worse than in only a few other states across the country.

Historic trends over the years have shown the results of these various tort reform methods, including non-economic caps. When the cap in existence was considered, it was put in place because many medical malpractice insurance companies were either going bankrupt or leaving the industry. PHICO, which insured many of the hospitals in the state in the 1980's and 1990's, ended up in receivership. The St. Paul Companies, which was once the largest medical malpractice insurance carrier in the country, abandoned its medical malpractice insurance lines altogether, leaving many hospitals and providers in the State of North Dakota scrambling for coverage in the late 1990's. Several additional carriers have stepped in to fill that gap, but one of the considerations for whoever is willing to write insurance in this state, is the legal environment that exists. For medical malpractice insurance, the existence of a reasonable cap on non-economic damages is precisely the type of consideration that is evaluated by insurers entering the market in this state. As an example, Montana has a unique legal construction that relates to how insurance companies are found in bad faith. It is my understanding that some companies choose not to write in Montana for that reason. That same risk applies to this proposed bill.

Unlike automobile insurance, there is a limited number of companies that provide medical malpractice insurance. The fewer companies that elect to write policies in a state, the higher the premiums become for our health care institutions. Studies have shown a direct correlation between the kinds of laws existing in a state and the corresponding insurance payouts – and resulting increase in premiums – that can be expected. There are numerous studies showing the trends over time in medical malpractice related to when tort reform efforts were put in place. In Florida, before they enacted tort reform, there were stories that the malpractice premiums for OB/Gyn physicians were higher than their salaries - and OB's were leaving the state as a result. That changed dramatically when they changed their litigation structure.

Many hospitals, especially in rural North Dakota, are having a very difficult time staying afloat financially the way it is. Many of those facilities and small town practitioners have \$1,000,000 and \$2,000,000 professional liability policies. Changing this law as demonstrated in HB 1349 would virtually require the addition of insurance policies for every hospital, no matter what their size, to at

least a \$5,000,000 policy. Realistically, that is even light, given that the multitudinal multiplier for individual providers increases the cap risk exponentially. That comes at a significant cost – a cost our medical providers and institutions simply cannot afford

Insurance companies base their entire portfolio on the risks inherent with any provider or institution based on the litigation climate and the litigation structure within any particular state. Passage of this bill will increase the costs of medical malpractice insurance dramatically.

Very few cases of medical malpractice actually go to trial. Most are either dismissed without merit or are resolved by voluntary settlement between the parties. The difference in achieving settlement in cases brought in North Dakota and Minnesota is very different. In North Dakota, given our present non-economic cap, there is at least some certainty to what is at risk. When negotiating settlements in North Dakota, we know what the economic losses at issue are as they are far more finite in nature. While most cases will never reach the non-economic cap in the event of an adverse verdict, it gives us a finite universe from which to work to get cases resolved. HB 1349 will result in attorneys arguing that every case is worth \$2 million to \$3 million, pointing to aberrant cases like the St. Cloud case or the Williston case I referenced earlier. We see it all the time in Minnesota. This results in more cases going to trial and clogging up the Court system and the costs of settlements and litigation go up accordingly. The effect is not simply those rare few cases that go to trial and even rarer cases that result in a verdict against a medical provider. It is the overall effect on the system that will cause values collectively to skyrocket. It will potentially lead to a doubling, if not more, of the cost of medical malpractice insurance for health care providers and institutions. Those costs are ultimately borne by all of us who need health care.

The question of significant cost to the medical system is unequivocal. Balance that with what is ultimately being sought. Medical malpractice cases are typically brought on a 40% to 50% contingency fee, plus costs, meaning half of what this bill provides will go to the trial attorneys representing the patient. It is no surprise that the largest push for this bill is the trial attorneys association, who stand to double or triple their fees.

The only allure that could possibly be seen from this is giving the jury of peers autonomy to make decisions. While that is true in some respects, we already place all kinds of limits on what a jury can and cannot do and do so for good common sense policy reasons. We legislatively place limits on punitive damages. We do so because, much like non-economic damages, there is no quantifiable measure to ensure consistency or predictability and a jury has no real measure or ability to quantify those awards. As a result, we limit the jury to \$250,000 or two times the compensatory damages to provide that consistency and predictability. We limit the amount of interest that can be awarded by a jury to a finite range, again to promote consistency and predictability of results. We provide limits to how old a case may be through statutes of limitations, regardless of whether a jury might find the claim meritorious – again all through efforts to promote good public policy and predictable and consistent results. While the statute of limitations for medical malpractice cases is an open ended time frame based on discovery, we put limitations on the number of years we will extend that discovery time to 6 years (other than infancy). We do so for public policy and to provide consistent and predictable results. Is pain in the toe worth \$300,000 to one person and a chronic headache worth \$2.2 million to another? There is simply no way to provide any measure of consistency or predictability to these kinds of damages, which is precisely why a reasonable limit is appropriate. Millions of dollars (or \$10 million to \$20 million with multiple named medical providers) is not reasonable. It does nothing to “put the injured party back

in the position they would have been in”, like economic damages do. \$500,000 tax free is more money than nearly all residents of the State of North Dakota will ever encounter at one time in their lifetime. In the example above, is it unreasonable to limit the award of \$2.36 million to \$500,000 for a problem with their toe – a tax free amount far greater than most people ever see in a lifetime? Doesn’t common sense dictate that it is more than reasonable to cap non-economic damages (which are by definition unquantifiable in any respect) at that level and avoid the significant increased costs and uncertainty to the health care providers in this system – costs that will ultimately be passed on and borne by the residents of the State of North Dakota.

Thank you for your consideration and I would strongly urge a Do Not Pass for HB 1349 from this Committee and the House and Senate at large.

Randall S. Hanson

Randall Hanson | Attorney

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PROTECT HEALTH CARE ACCESS IN NORTH DAKOTA, VOTE NO ON HB 1349

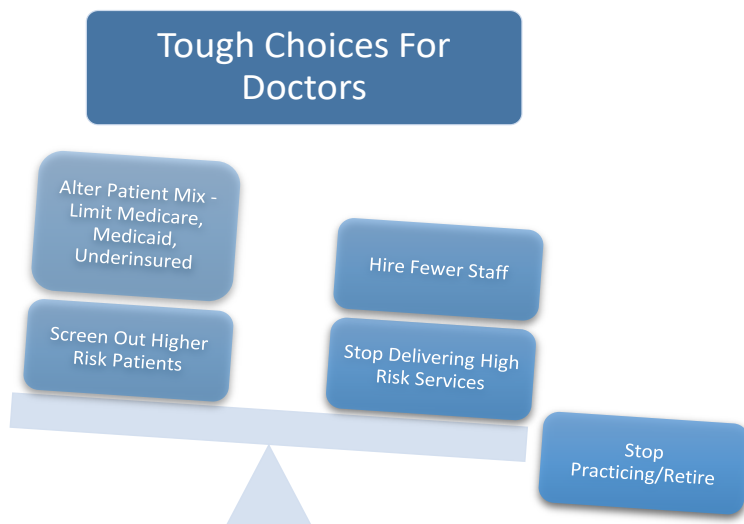
House Bill 1349 would make North Dakota's non-economic damages cap the highest in the country!

It threatens citizens' access to healthcare by destabilizing the cost to deliver care, making it unaffordable for physicians to provide high risk specialty care, especially in rural and underserved areas, and further challenging recruitment of new physicians to the state.

Threat To Healthcare Access

North Dakota's elected officials established tort reforms, like caps, in the 1990s to strike a balance between maintaining access to care, i.e. keeping and attracting providers, and ensuring that patients are compensated when an adverse event due to negligence does occur.

In studies of physicians facing the elimination or significant increase in caps, doctors have stated that they would:



Higher Costs

Non-economic damage caps have proven effective toward that balance by controlling excessive settlement costs, which in non-capped states have contributed to the increase of the overall cost of health care.

- On average, states with NED caps <\$500k save nearly \$900 per capita in healthcare costs compared to states with no cap.
- According to a Forbes 2020 study on healthcare spending, the removal of caps on damages would cost states an estimated additional \$4.68 billion in healthcare costs per year. ([Medical Malpractice Cases by State Forbes 2023](#))

Economic Damages

UNLIMITED

- They are measurable and quantifiable.
- Common examples of compensation are past and future medical bills, wages, lost benefits, the value of domestic services, home and vehicle modifications, physical and mental therapy, and loss of employment or business.
- Economic damages are unlimited in the state of North Dakota.

Non-Economic Damages

LIMITED

- Are difficult to measure and are based on personal feelings or opinion.
- Common examples are referred to as mental anguish, emotional distress, pain and suffering, and loss of consortium.
- Non-economic damages are limited to \$500,000 in the state of North Dakota.

Disrupt The Equilibrium

North Dakota's laws strike a balance between ensuring patients receive fair compensation when injured and stabilizing costs to ensure access to health care providers. This protects patients and the medical community from increasing health care expenses and preserves access across all of North Dakota. Eliminating the cap would disrupt this critical balance.

Non-economic damage caps in North Dakota are working. The severity, or size of claims, in North Dakota on average has been lower than the rest of the United States. However, even with cap North Dakota has experienced years where severity has risen in excess of the national average. This demonstrates that the cap is still very much needed to stabilize cost on healthcare and therefore, the cost to afford healthcare services.



NORTH DAKOTA'S NON-ECONOMIC DAMAGES CAP:

- ✓ Gives providers a **sense of stability** in their medical practices
- ✓ Allows the medical community to focus their **attention and resources on delivering quality care to their patients**
- ✓ Ensures **access to specialty and high-risk services**
- ✓ Guarantees **equitable compensation for all citizens** whether from Fargo or Stanley

We have gotten away from what is at the heart of health care—the patient-provider relationship; research suggests that strengthening the patient-doctor relationship can significantly reduce patients' hospitalizations and expenses (to providers and Medicare) and improve their mental health (*New York Times* magazine, Tingley, 2018). Tort reforms, including caps on damages, keep providers focused on delivering quality patient care, not on the threats of losing their home due to excessive verdicts.

What YOU Can Do

Protect Access,
Protect Quality,
Protect Stability,
Protect Affordability,

PROTECT CAPS

VOTE NO ON HB 1349

**Testimony in Opposition to HB1349****Submitted by R. Wayne Reid, MBA****Chief Executive Officer, Langdon Prairie Health**

Chairman and Members of the Committee,

Thank you for the opportunity to provide testimony regarding HB1349. My name is Wayne Reid, and I serve as the Chief Executive Officer of Langdon Prairie Health, a Critical Access Hospital in Langdon, North Dakota. I appreciate the intent behind this legislation; however, I must express my strong opposition to HB1349 due to the devastating impact it would have on rural healthcare access, affordability, and sustainability in our state.

HB1349 proposes to raise the cap on non-economic damages from \$500,000 to \$1,500,000 in 2026 and further increase it to \$2,500,000 in 2028. This 400% increase alone would be a significant financial burden, but the removal of language ensuring a single cap per claim exacerbates the risk. Under this bill, if only four individuals were named in a lawsuit, our facility could face \$10,000,000 in non-economic damages—an unsustainable liability for a small, rural hospital like ours, which operates with just \$13 million in total patient revenue.

The consequences of such a change are well documented. A 2019 National Institutes of Health (NIH) study identified a clear correlation between increased non-economic damage caps and rising healthcare costs. The study further highlighted how these increases lead to defensive medicine practices, a decreased physician workforce, and higher overall healthcare spending. In a time when healthcare providers are being asked to contain costs and maximize efficiency, HB1349 would directly contribute to rising costs for North Dakotans while simultaneously jeopardizing their access to care.

Further, a comparative look at neighboring states demonstrates the importance of maintaining a reasonable cap. South Dakota currently upholds the same \$500,000 cap as North Dakota, while Montana enforces a more conservative cap of \$250,000. Implementing the dramatic increases outlined in HB1349 would place North Dakota at a severe competitive disadvantage in attracting and retaining physicians, particularly in rural areas already facing provider shortages.

We have already seen how excessive malpractice insurance costs have contributed to the decline of obstetric services across the country, particularly in rural communities. The passage of HB1349 could lead to similar reductions in acute care services, further straining the already



fragile rural healthcare system. Worse yet, hospitals could face closure due to either skyrocketing insurance premiums or an inability to secure insurance coverage altogether.

I deeply appreciate this committee's dedication to improving healthcare for all North Dakotans. However, I urge you to consider the unintended consequences of HB1349. The financial instability this bill would impose on hospitals, especially in rural areas, could lead to diminished services, higher costs, and even hospital closures—leaving North Dakotans with fewer healthcare options when they need them most.

I respectfully request that you oppose HB1349 to protect the viability of rural healthcare in North Dakota. Thank you for your time and consideration. I am happy to answer any questions you may have.

Sincerely,

R. Wayne Reid, MBA

Chief Executive Officer

Langdon Prairie Health – Langdon, ND

701-256-6180 | 701-256-2170

Gerald Zarlengo, MD
TESTIMONY ON HB25-1349

Chairman, Members of the Committee, my name is Dr. Gerald Zarlengo, I am an obstetrician and the Chairman and CEO of Copic. Thank you for allowing me a chance to testify in opposition to this bill.

I want to begin by sharing a little bit about my personal story and interest in this bill.

- Physician Father practicing in the 1980s when large verdicts were driving carriers to leave Colorado, abandoning providers.
- Personal story of getting insurance coming into medicine.

In Colorado, like in North Dakota, the passage of bipartisan legislation resulted in the stabilization of the cost of liability insurance.

As the Chairman and CEO of Copic, I am the 4th physician to serve in this role. In their wisdom, Copic's founders made it a prerequisite to have a physician-CEO so that the company would maintain a strong connection to healthcare and not be driven by shareholders or profit motives, but instead, be guided by our mission of "improving medicine in the communities we serve." To best serve this mission, Copic engages in the legislative process to support and inform legislators regarding the impact of the delivery of safe, quality care in all of our markets. For this reason, I am here in opposition of House Bill 1349. This bill would upend a critical law that has served North Dakota well by striking a careful balance of ensuring its citizens have access to health care while also ensuring a reasonable restitution when an adverse event occurs.

Copic is the number one medical professional liability insurance carrier in North Dakota, insuring hundreds of the physicians and dozens of hospitals. Our fiduciary responsibility is to them. We are annually audited by actuaries and regulated by the North Dakota Insurance Department. Our historic stability and therefore the stable rates we are able to provide for our insureds can be credited to these reasonable state reforms that strike a balance between the public interest in access to health care and the right for compensation.

Nobody wants to see adverse outcomes and the significant impact they have on patients and their families. To best serve our physician and hospital providers, we use our claims experience to prevent errors from ever happening. Our patient safety and risk management department consists of nurses and physicians who lead proactive educational efforts that include nationally recognized patient safety programs. Copic's ability to concentrate on prevention versus just defending when an adverse event occurs is credited to tort reforms that ensure accountability, but do not strike fear in the hearts of physicians. This is important—this balance promotes the act of talking to their patients and allowing themselves to be open to learn and improve versus shutting down when things do not go as planned.

North Dakota's tort reforms, among other things, establishes a cap of \$500,000 non-economic damages. There are two types of damages. Non-economic damages are the damages for the immeasurable part of a medical mishap: mental anguish, emotional distress, inconvenience, and pain and suffering. Economic damages, including medical bills, lost income, domestic services, physical and mental therapy are not capped.

You will hear arguments that this is not enough. I would argue that there is no amount of money that is the right amount, but public policy must often determine how to balance the public interest in access to health care and the right for compensation. A cap establishes an equitable solution for citizens by creating a maximum amount that any one citizen can receive for damages that are subjective and immeasurable. Most all states have tort reforms of some type and the majority of states in the country have caps on non-economic damages. North Dakota's cap of \$500,000 is in line with the median of capped states and has helped to keep premiums stable and affordable. This point has helped to rank North Dakota as one of the best states to practice medicine by Medscape in 2024.

If House Bill 1349 passes, North Dakota would have the highest non-economic damage cap in the country, cause the cost of medical malpractice premiums to increase dramatically, and hurt the retention and recruitment of physicians and hospitals in the state. For some physicians in high-paying specialties, the premium increase may be a relatively minor problem. However, for those in family practice providing obstetrics, emergency medicine, and neurology, it presents a much bigger impact. Damage caps also allow physicians and hospitals to plan accordingly without having to limit services such as obstetrics from their family practice, alter their patient mix by limited Medicaid or Medicare patients, or shutter their practice all together for financial reasons.

Help preserve North Dakota's reforms that are working for patients and its medical providers.

Please vote no on HB 1349. Thank you.

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

Chairman Klemin and members of the House Judiciary Committee, I am Joel Larson, General Counsel of the Altru Health System in Grand Forks, ND. I am here to testify in opposition to House Bill 1349. I ask that you give this bill a **Do Not Pass** recommendation.

We ask for a **Do Not Pass** for a number of reasons. The bill is anti-healthcare and anti-workforce and would generally lead to an absurd result that is unlike what is expected in North Dakota. This testimony will address these topics, but first I'll off some information on what non-economic damages are if not already covered by prior testimony, along with brief testimony against a portion of the proposed deleted text.

Non-economic damages are generally things that don't come with a price tag, such as: pain, suffering, inconvenience, emotional distress, fear, loss of society and companionship, loss of consortium, and humiliation. While these feelings are real and people are appropriate to ask for a reasonable amount of compensation, to increase limits in the way HB 1349 is attempting would not be reasonable. Many states, including all states around North Dakota (except Minnesota), have reasonable non-economic caps. The caps range from \$250,000 to a little less than \$1 million. No state currently has a non-economic cap higher than \$1 million, let alone \$3 million.

Additionally, in the deleted portion of NDCC 32-42-02 subd. 1 in HB 1349, it strikes the following underlined language...may not exceed "five hundred thousand dollars, regardless of the number of healthcare providers and other defendants against whom the action or claim is brought or the number of actions or claims brought with respect to the injury". Historically, if an injury occurred a plaintiff can recover their respective economic damages (loss of income, loss of earning ability, ongoing care, etc) as well as a total of \$500,000 for the claim, even if the plaintiff sued the hospital, doctor A, doctor B, resident C, and whomever else was named in the suit. Applying this same scenario to HB 1349, the plaintiff would then attempt to recover the "cap", whether \$1 million or \$3 million, against hospital, doctor A, doctor B, resident C, and whomever else, attempting to recover 5-6 times the cap. This is an absurd outcome and would be very unfavorable to North Dakota's hospitals, and would benefit so few individuals it should not even be considered.

Anti-Healthcare: Raising medical malpractice limits **will** raise insurance premiums. Instead of money being used to improve programing for patients or to increase access to care, the money would go to insurance premiums and/or to a small number of plaintiffs and their lawyers (many of whom are not residents of North Dakota). This does not improve care, access to care, or healthcare outcomes, it just makes it more expensive.

Anti-Workforce: As General Counsel to Altru, I have the pleasure of spending 15-30 minutes with every new physician that joins us. A large number of the physicians that join Altru from out-of-state have said they have come to North Dakota in part because they hear from colleagues that it is a good place to practice medicine without fear of unwarranted lawsuits. Having a reasonable cap on non-economic damages is good for North Dakota's healthcare workforce. It reduces the number of non-meritorious cases, thus reducing the stress to providers. To increase the caps as proposed in HB 1349 would hurt North Dakota's healthcare recruitment, and would therefore hurt North Dakotans.

For these reasons, on behalf of Altru Health System, I ask that you give HB 1349 a **Do Not Pass** recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Joel Larson
General Counsel, Altru Health System

**Testimony on Liability Limits
for Health Care Malpractice Actions or Claims
House Judiciary Committee
February 3, 2025
House Bill 1349**

Chairman Klemin and Members of the House Judiciary Committee, my name is Nikki Wegner, and I serve as the President of the North Dakota Long Term Care Association for 182 assisted living, basic care, and skilled nursing facilities. I appreciate the opportunity to share my concerns regarding HB 1349 and ask that you give the bill a **Do Not Pass** recommendation.

While I understand and respect the desire to ensure fair compensation for patients, I worry that this bill will have unintended consequences that could harm North Dakota's health care system, particularly in rural settings.

Potential Impact on North Dakota's Health Care System

Healthcare providers across the state are already struggling with financial and workforce challenges. If HB 1349 passes, higher liability costs could slow medical innovation, make it even more difficult to recruit and retain skilled professionals, and put essential services at risk. Nuclear verdicts or massive jury awards are rising and driving up healthcare costs at an alarming rate across the county. These verdicts, fueled by social inflation or the shifting attitudes toward litigation are making medical malpractice claims more expensive. As malpractice claims rise, insurance companies will pay out more, driving up premiums for providers. That added financial strain could mean scaling back essential services, raising costs for patients, or, in the worst cases, shutting down, especially in rural communities where resources are already stretched thin.

The Importance of Balance

I recognize that there are different perspectives on this issue, and I do not claim to be an expert in medical malpractice law. However, I do know that maintaining a balanced and predictable system is critical for ensuring that health care remains accessible and affordable in our state.

It is important to keep in mind that non-economic damages, which compensate for pain and suffering, emotional distress, and disfigurement are distinct from economic damages, which cover medical bills, lost wages, and earning capacity. Non-economic damages are the only damages currently capped in North Dakota. Plaintiffs can recover unlimited economic damages seeking any amount of compensation for past and future lost wages and medical expenses.

Other states have reasonable caps in place to help providers remain financially stable while still allowing for appropriate compensation when harm occurs. This bill proposes a major and unprecedented increase to North Dakota's cap on non-economic damages in medical malpractice cases. It would raise the current cap from \$500,000 to \$3 million, making it the highest in the country, surpassing even states like California and New York. Right now, our cap is in line with neighboring states like Montana (\$250,000) and South Dakota (\$500,000), as well as others like Texas, which recently lowered its cap to \$250,000. Without similar protections, North Dakota's health care system could become even more fragile.

A Cautious Approach

I respectfully ask the committee to consider the broader impact of this bill and how it may affect patient access to care, provider sustainability, and overall health care costs. Rather than lifting caps entirely, I hope we can find a balanced solution that protects both patients and the long-term viability of our health care system. For these reasons, I urge you to oppose HB 1349 and support policies that reinforce, rather than compromise, rural health care.

Thank you for your time and consideration.

Nikki Wegner
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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.

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February 2, 2025

Re: Written Testimony in Opposition to House Bill No. 1349

House Judiciary Committee:

My name is Tracy Kolb. I am a North Dakota lawyer licensed to practice since 1995. For nearly 30 years, a primary emphasis of my practice has been defending and trying medical malpractice lawsuits in North Dakota brought against physicians, physician assistants, nurse practitioners, nurses, clinics, and hospitals. I offer this written testimony in opposition to House Bill No. 1349, which, among other things, proposes to increase the cap on non-economic damages in medical malpractice actions from \$500,000 to \$3,000,000 and eliminate the cap altogether in malpractice actions involving an unborn fetus. There is no reason to change what has worked, and worked well, since the statute was first enacted in 1995.

N.D.C.C. § 32-42-02

In its current form, section 32-42-02 caps noneconomic damage in health care malpractice injury and death actions at \$500,000. Noneconomic damage consists of pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, fear of injury, fear of loss, fear of illness, loss of society and companionship, loss of consortium, injury to reputation, and humiliation. These damages have been described by courts, including the North Dakota Supreme Court, as more abstract, inherently arbitrary and unquantifiable, and not susceptible to arithmetic calculation. The cap applies regardless of the number of health care providers and other defendants who are sued in a malpractice action and regardless of the number of actions or claims brought against those defendants. For example, if there is one physician defendant who has been sued based on a claim alleging medical negligence, the cap would apply to that action. If there were multiple health care provider defendants and multiple claims against those defendants, the cap would apply to that action. If a malpractice action is tried, the jury is not told about the cap. If the jury finds liability and awards noneconomic damages more than the cap, the trial court must reduce those damages to \$500,000. To my knowledge, there have been three malpractice trials in 30 years in which a jury awarded more than \$500,000 noneconomic damages and, in each of those actions, the award was reduced to the cap. One of those cases, of which I have direct knowledge, *Condon v. St. Alexius Medical Center*, 2019 ND 113, 926 N.W.2d 136,

was appealed to the North Dakota Supreme Court based on a constitutional challenge to the cap. The court rejected the challenge, holding the statute was not unconstitutional.

There is no cap on economic damage. These damages consist of more quantifiable, calculable expenses, such as medical care, rehabilitation services, custodial care, loss of earnings, loss of earning capacity, loss of income, loss of support, cost of substitute domestic services, loss of employment, loss of business, and loss of employment opportunities. Under section 32-42-02, there is no limit on the amount of damages a jury may award for economic damages.

House Bill No. 1349

Under House Bill No. 1349, the noneconomic damage cap would be increased from \$500,000 to \$3,000,000 over the next five years and this cap would apply to each defendant and each claim. A lone defendant would be subject to a \$3,000,000 cap whereas multiple defendants would each be subject to a \$3,000,000 cap. The lone and multiple defendants would also be subject to a \$3,000,000 cap per claim if more than one claim was alleged. If, for example, there were four defendants with one claim alleged against each defendant, the cap would be \$12,000,000. If there were multiple claims against the defendants, the cap would multiply for each claim. Most malpractice actions involve multiple defendants and often multiple claims. As I read the amendment, what is proposed is not a singular cap on noneconomic damage.

It is also proposed that the cap would not apply to a malpractice action or claim “brought on behalf of an unborn fetus.” It is not understood at all what is meant by this. Does it pertain to termination of pregnancy by abortion? Or a wrongful death malpractice action arising out of the labor and delivery and death of the baby or injury or death of the mother? Or something else? As written, it is confusing.

Procedural History of N.D.C.C. § 32-42-02

In 1995, the legislature enacted section 32-42-02 as part of a comprehensive Health Care Reform Bill that was the culmination of a five-year study by a task force created to review the healthcare system in North Dakota and to make recommendations for improvement.¹ In conjunction with the task force, the legislature also directed the Legislative Council “to study the feasibility of all sources of funding for health care benefits” in an effort to control costs and improve healthcare access.² The task force brought together a diverse group of individuals representing “a broad cross Section of organizations in the state, including business, farm, labor, education, a number of healthcare organizations, and senior citizen groups.” The end product was the result of “thousands of hours of study, analysis, debate, input, and sweat” and resulted in a “compromise piece of

¹ North Dakota Health Task Force et al., Final Recommendations on Health Care Reform: Report to the State Health Officer, the State Health Council, and the Governor (Task Force) (1994) (“Final Recommendations”) <https://statehistoricalsocietyofnd.on.worldcat.org/oclc/31001350>

² 1993 SCR 4061

legislation.” In short, the Health Care Reform Act was the end result of thoughtful, thorough, and negotiated consideration.

Section 32-42-02 in particular is indicative of that compromise. For example, that section originally included provisions establishing limits on contingent fees paid to attorneys representing malpractice claimants, authorizing healthcare-professional-licensing boards to establish practice parameters, and creating a presumption that services in accordance with the parameters met the standard of care.³ All of those proposed reforms were deleted from the final version. Moreover, the provision limiting recovery of noneconomic damages increased from the original proposed cap of \$250,000 to the current \$500,000 limit.

The legislature heard testimony that the cap on noneconomic damages was intended to provide malpractice carriers with the ability to better project reserves and, thus, premium structures. The legislature was advised that being able to better predict noneconomic damages, which are inherently arbitrary and which can lead to verdicts that are disproportionate to the economic damages sustained, would in turn stabilize malpractice premiums and ultimately lead to overall stability of healthcare costs.

This same rationale played a prominent role in 2009 when, twelve years after the legislature enacted section 32-42-02, it considered whether to repeal the cap altogether or to increase it to \$1-million.⁴ During debate on the proposed amendments, the legislature held hearings and heard a variety of opposing opinions. Those speaking against repeal or amendment provided the legislature with the following rationale for keeping the statute as is. Some of those record comments are as follows:

- Limitations are the single most effective means of reducing the cost of the malpractice-tort system, while ensuring that patients are fully compensated for their economic damages. Several studies demonstrate the link between caps on noneconomic damages and lower premium rates. The repeal of section 32-42-02 would result in increased professional-liability insurance rates for North Dakota physicians.
- That a cap on noneconomic damages can eliminate the incentive to litigate weak or meritless malpractice claims.
- Caps recognize the direct cause of instability in the medical-liability insurance market: exploding liability premiums due to a national environment of

³ Final Recommendations at 16-18.

⁴ The entire legislative history of H.B. 1309 is available online at: <http://www.legis.nd.gov/research-center/history/2009>.

escalating jury awards and settlements. Several studies demonstrate a link between caps on noneconomic damages and lower premium rates.

- Caps on damages increase physician supply, particularly in rural states and on high-risk specialties. This is particularly the case for the rural areas of North Dakota.
- North Dakota struggles to recruit and retain qualified healthcare professionals and faces challenges deploying resources to serve geographically dispersed communities due to its geographic and resource disadvantages. The proposed changes to section 32-42-02 would remove one of the key advantages the state has in encouraging healthcare professionals to locate and remain in North Dakota.
- North Dakota has been able to avert the medical-liability crisis affecting other areas of the nation by its proactive reforms, including section 32-42-02.
- Caps help to prevent the practice of defensive medicine, which ultimately increases the cost of providing care to North Dakota citizens.
- Noneconomic damages are unquantifiable, and because they are arbitrary, they have the potential to be limitless, injecting an unknown into any evaluation of a case's value. Setting a limit on this type of indeterminate damage fosters productive settlement discussions.

The 2009 legislature ultimately rejected attempts to repeal or amend section 32-42-02 and there have been no further efforts until now.

N.D.C.C. § 32-42-02 should not be amended

The rationale supporting section 32-42-02, when initially enacted in 1995 and when considered again in 2009, holds true today. As a lawyer who defends and tries medical malpractice cases, I can speak directly to some of the impacts on litigation if House Bill No. 1349 was passed.

- Many health care professionals would need to increase the limits of their insurance coverage to protect themselves from the increased liability exposure. Medical negligence cases are expensive to prosecute and defend, along with the potential liability of an adverse verdict. It often takes 18 to 24 months to conduct fact and expert discovery and prepare these cases for trial. Expert witnesses are required in these cases and medical experts are expensive. The cost of defense is paid under the health care professionals' insurance policy or in some cases their employers through self-insured retentions. That cost impacts insurance coverage and insurance premiums.

- The number of medical negligence actions commenced against healthcare professionals in North Dakota has remained relatively constant over my 30 years, but there has been an increased number of these cases in the last seven years. Some cases are dismissed, some are settled, and some are tried to a jury. There is an occasional plaintiff verdict, but most often the cases are successfully defended at trial. House Bill No. 1349 would have an immediate effect on litigation, increasing the “value” of a medical negligence case from the plaintiff’s perspective ultimately by six times or a more than 500% increase. That percentage would be higher if it is not a singular cap. It would also significantly impede efforts to settle these cases because it would inject instability, uncertainty, and unpredictability without the singular \$500,000 noneconomic damage cap. And to suggest that increasing the cap would ensure injured malpractice plaintiffs are better compensated for wildly speculative noneconomic damages ignores that a significant percentage is not recovered by the plaintiff but their attorney. It further ignores that there is no limit on economic damages and the vehicles used by plaintiffs to inflate economic damage awards—for example life care plans and for which there is no corresponding requirement that a plaintiff apply the award to the care in the plan.
- North Dakota is not an outlier with a cap on noneconomic damage in medical negligence actions. Most states have caps at amounts well below \$1 million and certainly below the excessive amounts proposed under House Bill No. 1349.

Any cap on damages, by its very nature, limits the amount that some plaintiffs will be able to recover. It is worth emphasizing again, though, that there is no limit on economic damages and with respect to noneconomic damages, the cap in its current form under section 32-42-02 should remain because it protects North Dakota health care professionals from inherently arbitrary noneconomic damages that can lead to large and unpredictable verdicts wholly divorced from the actual economic loss sustained, which create the need for unnecessarily large reserves, causing instability in the malpractice-insurance premiums, and in turn impacts health care costs.

Thank you for the opportunity to address House Bill No. 1349. Respectfully, it is requested that the House Judiciary Committee reject this proposed bill with a Do Not Pass recommendation.

Very truly yours,



Tracy Vigness Kolb

June 18th, 2020; my family had to say goodbye to my amazing mother, Kandace Kay Loken, because of an elective surgery gone wrong and a doctor's poor decisions. A surgery gone wrong and then she had to endure nine months of surgeries, comas, CPR, dialysis, pacemakers, respirators, feeding tubes, wound vacs, physical therapy, pain and suffering. All while her children and husband had to endure nine excruciating months of watching her struggle to survive, waiting, watching, crying and praying. Nine months of watching her deteriorate right before our eyes before her body finally had had enough and she left us at 4:30pm on June 18th.

After her passing, we made the decision to pursue a malpractice lawsuit. We really struggled to find an attorney to help us. This is when we learned that because we lived in North Dakota recovery for her wrongful death was limited to \$500,000. Many attorneys told us they could not take our case because of how expensive the case would be to pursue because of all the medical experts needed and that recovery would be limited to a maximum of \$500,000.

This is when we learned the value placed on my mother's life according to the ND was maxed out at \$500,000. If my mother Kandace had lived in one of 22 other states the value of her life would have been left up to a jury and not limited to a 30 year old law in ND where the max is \$500,000. If this happened just across the street in MN her life would have been not been limited by this unfair cap.

Another thing we learned; if my mom was killed by any other wrongful action, for example a car accident, the value of her life would not have been found limited by this cap. And there would no limit to the dollar amount we could seek. But being it was medical malpractice; her life value was 'capped'. Our pain and suffering was 'capped'. No consideration to what an amazing human Kandace Loken was before her life was cut short. She was a loving wife of 43 years and she raised 3 successful kids. She adored her 9 grandchildren every chance she could get, they were all truly the light of her life. Everyone described her as the life of the party, and she loved sharing Christmas time with family and shopping with her sister.

We will truly miss her forever and it is in her honor that we are here to speak to you, to try to change this cap so that other families don't have to go through what ours had to endure.



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



GREATER NORTH DAKOTA CHAMBER
HB 1349
House Judiciary Committee
Chair Lawrence Klemin
Feb. 3, 2025

Mr. Chairman and members of the Committee, my name is Arik Spencer, and I am the President and CEO of the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization, with membership represented by small and large businesses, local chambers, and trade and industry associations across the state. We stand in **opposition to HB 1349**.

In our 2024 ND Economics and Employer Survey of our membership, when asked to name one thing the state government could do to help your business, the top answer was to make healthcare more affordable, not more expensive.

Healthcare costs are already rising, resulting in small group insurance premium increases between 6.3 and 15.3 percent for the 2025 plan year, which were approved by the Insurance Commissioner last fall. We are concerned that the 500% increase for medical malpractice noneconomic damages and the resulting increase in malpractice insurance premiums proposed in HB 1349 will increase rather than decrease healthcare costs to employers.

These increases leave employers with hard decisions. Do they continue offering employer-sponsored health insurance or provide cost-of-living raises to help employees pay for rent and groceries?

We urge a DO NOT PASS on HB 1349 and will be pleased to answer any questions.

Testimony in Opposition to House Bill 1349
House Judiciary Committee
February 3, 2025

Chairman Klemin and Members of the House Judiciary Committee, my name is Reier Thompson, and I am the President and CEO at Missouri Slope Lutheran Care Center here in Bismarck. Thank you for the opportunity to provide testimony in opposition to House Bill 1349. I strongly urge the committee to give this bill a **Do Not Pass** recommendation.

The Consequences of HB 1349 on Skilled Nursing Facilities

As a skilled nursing provider, I recognize the importance of fair compensation for patients who have suffered harm. However, HB 1349 significantly increases the cap on noneconomic damages in medical malpractice cases from \$500,000 to \$3 million, making North Dakota's cap the highest in the country. This drastic shift could have devastating consequences for the long term care sector, which is already struggling under financial constraints and workforce shortages.

Skilled nursing facilities operate with narrow margins while providing high-quality care to some of North Dakota's most vulnerable residents. Increasing liability costs through excessive noneconomic damage awards will have a ripple effect on our entire system. Medical malpractice insurance premiums will skyrocket, further straining facilities that are already facing reimbursement challenges, rising operating costs, and staffing shortages.

Impact on Workforce and Access to Care

The long term care workforce is in crisis. Skilled nursing facilities are already facing unprecedented challenges in recruiting and retaining nurses, CNAs, and other essential personnel. If liability costs rise as a result of this bill, it will further discourage professionals from entering or staying in the field, exacerbating an already dire workforce shortage.

Additionally, increased liability risks could lead to a reduction in services. Facilities may be forced to scale back specialized care programs, limit admissions, or even close entirely. This is particularly concerning for rural communities, where skilled nursing facilities serve as critical health care access points. If providers cannot afford to operate under these increased liability costs, North Dakota's elderly and disabled populations will face reduced access to quality long term care.

The Importance of a Balanced Approach

While ensuring fair compensation for patients is important, it is equally critical to maintain a balanced system that allows health care providers to remain financially stable and continue delivering care. North Dakota's current cap on noneconomic damages is already aligned with neighboring states such as Montana (\$250,000) and South Dakota (\$500,000). Raising it to \$3

① Introduce

Emily Conan
 married, 3 kids, 2 in school in Williston Basin
 Educator in Williston since 2009

I want to tell you a story of
 what happened to me in 2018

② Recovery Room

A. Thankful me

B. Lawsuit ^① Duty to protect community

— ^② make them accountable

— Realized how terribly broken

CHI System is.

— ~~Kept asking CHI to fix their~~

system - they had no interest

— refused to take responsibility

Predictable - preventable

③ Universal Protocol ^{20 years ago}

System creates redundancy

to prevent human error from

reaching the patient.

A. 16 errors

B. Doctor → System

employee

patients

CHI had been ignoring training, training, training
 employees for over 4 years prior to my surgery.

As part
 of settlement
 discussion I
 wanted

what I didn't know then
 was that my life was forever
 changed.

- ④ Complex regional pain syndrome
- A. Came from surgery on the wrong side
 - B. Worst pain syndrome - ^{suicide} syndrome
 - C. Broken foot had the surgery + healed
 - D. Perspective McGill Pain Scale 46/60
10 points higher than unplanned child birth
4 points higher than kidney stone

Imagine being trapped in that level of ^{constant} pain with no cure.

e. two ^{implant} surgeries - no cure ^{I stop working recently had a second in my spine I have PT twice a week I have injections 3 times a week} just maintenance support

⑤ Changed my life - the person I was before is gone.

Mother - the boys don't remember a mother run - play - go to all events now. ^{I miss out on a lot and I am cranky}

Teacher - a part of an educators identity is being a teacher. went back into classroom spring 2021. Struggled to exist. baseline declined, never recovered

Active Outdoorsmen + Adventurer - I still go but we travel by car + I sit on the sideline + watch.

Caretaker - now I am the one being taken care of.

⑥ Understand my reality

- a. effects all aspects of my life
- b. sleep.
- c. panic attacks - trapped in pain
- d. my life is a balancing act of energy and pain levels.

⑦ I'm not a victim. I continue to fight to get out of life as much as I can. to have experiences w/ my children. Because I have 1 life to live.

⑧ Declining over the last year ^{I have always been unsure how long I will be able to keep working}

- A. During trial
- B. Work FMLA / STD Focus Health
- C. Couldn't use this
- D. Jury verdict - CHI got \$1 million discount

⑨ CHI

- A. tell my story - hear stories back
- B. CHI ~~was~~ ^{has} a bad reputation
- C. Means - go elsewhere ^{serious} healthcare
- D. Low caps - protect bad systems.
- E. Went to trial. Why would go trial wrong side case? Wasn't a risk. Never took accountability on something so obvious. And clearly, 500,000 is not enough of an incentive to change their system.

- 10 A. too late for me. I won't gain anything from this. Not about Mr. B. About protecting everyone that walks into CH1
C. change to protect communities
d. adequate compensation to people who have been injured

11 If someone showed up with a check for \$500,000.00, but your _____ would live a life of debilitating pain, would that be enough?

11. Vote YES.

- A. North Dakotans deserve better
B. Their lives are worth more than \$500,000
C. You have the power to envoke change ~~EE~~.

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1349
2/3/2025

A BILL for an Act to amend and reenact section 32-42-02 of the North Dakota Century Code, relating to liability limits for health care malpractice actions or claims.

3:32 p.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Discussion Topics:

- Damages for health care malpractice victims
- Compensation cap to unborn fetuses

3:35 pm. Representative Vetter proposed an amendment, testimony #33998.

3:37 p.m. Representative Vetter moved to Amend and adopt amendments proposed in testimony #33998.

3:37 p.m. Representative VanWinkle seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	N
Representative Jeff Hoverson	N
Representative Daniel Johnston	Y
Representative Carrie McLeod	N
Representative SuAnn Olson	N
Representative Bernie Satrom	N
Representative Mary Schneider	N
Representative Bill Tveit	N
Representative Lori VanWinkle	N
Representative Christina Wolff	N

3:45 p.m. Motion failed 3-11-0

3:46 p.m. Representative Satrom moved to amend and increase the limit on compensation that may be awarded from \$500,000 to \$1,000,000, remove the overstrike on lines 11-13, and remove all the lines following line 13.

3:38 p.m. Representative Vetter seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	N
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Bill Tveit	N
Representative Lori VanWinkle	N
Representative Christina Wolff	Y

3:50 p.m. Motion passed 10-4-0

3:50 p.m. Representative Christianson moved to Amend and strike lines 18-19.

3:52 p.m. Representative Christianson withdrew his motion.

3:52 p.m. Representative Vetter moved a Do Pass as Amended.

3:52 p.m. Representative Satrom seconded the motion.

3:56 p.m. Jaclyn Hall, Executive Director for the North Dakota Association for Justice, answered committee questions.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	N
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	N
Representative Daniel Johnston	N
Representative Carrie McLeod	N
Representative SuAnn Olson	N
Representative Bernie Satrom	A
Representative Mary Schneider	N
Representative Bill Tveit	N
Representative Lori VanWinkle	N
Representative Christina Wolff	Y

4:01 p.m. Motion failed 5-8-1

4:01 p.m. Representative VanWinkle moved to Amend and reinstate section 1 subsection 2 lines 18-19.

4:02 p.m. Representative Henderson seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	A
Representative Mary Schneider	N
Representative Bill Tveit	N
Representative Lori VanWinkle	Y
Representative Christina Wolff	N

4:06 p.m. Motion failed 6-7-1

4:07 p.m. Representative VanWinkle moved a Do Pass as Amended.

4:07 p.m. Representative Henderson seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	N
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	A
Representative Mary Schneider	N
Representative Bill Tveit	N
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

4:10 p.m. Motion passed 10-3-1

4:10 p.m. Representative Wolff will carry the bill.

4:11 p.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

February 3, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1349

Introduced by

Representatives Koppelman, O'Brien, D. Ruby, Vetter

Senators Hogan, Sickler, Roers, Kessel

1 A BILL for an Act to amend and reenact section 32-42-02 of the North Dakota Century Code,
2 relating to liability limits for health care malpractice actions or claims; ~~to provide an effective~~
3 ~~date; and to provide an expiration date.~~

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 32-42-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **32-42-02. Noneconomic damages limited - Reduction of award.**

8 1. With respect to a health care malpractice action or claim, the total amount of
9 compensation that may be awarded to a claimant or members of the claimant's family
10 for noneconomic damage resulting from an injury alleged under the action or claim
11 may not exceed ~~five hundred thousand dollars~~ one million dollars, regardless of the
12 number of health care providers and other defendants against whom the action or
13 claim is brought or the number of actions or claims brought with respect to the injury.
14 ~~one million dollars. The liability limits under this section must be adjusted annually as~~
15 ~~follows:~~
16 ~~a. On July 1, 2026, a total of one million five hundred thousand dollars.~~
17 ~~b. On July 1, 2027, a total of two millions dollars.~~
18 ~~c. On July 1, 2028, a total of two million five hundred thousand dollars.~~
19 ~~2. The liability limits under this section do not apply to a health care malpractice action or~~
20 ~~claim brought on behalf of an unborn fetus.~~

1 ~~3.2.~~ With respect to actions heard by a jury, the jury may not be informed of the limitation
2 contained in this section. If necessary, the court shall reduce the damages awarded by
3 a jury to comply with the limitation in this section.

4 ~~— SECTION 2. AMENDMENT. Section 32-42-02 of the North Dakota Century Code is~~
5 ~~amended and reenacted as follows:~~

6 ~~— 32-42-02. Noneconomic damages limited – Reduction of award.~~

7 ~~— 1. With respect to a health care malpractice action or claim, the total amount of~~
8 ~~compensation that may be awarded to a claimant or members of the claimant's family~~
9 ~~for noneconomic damage resulting from an injury alleged under the action or claim~~
10 ~~may not exceed one million dollars. The liability limits under this section must be~~
11 ~~adjusted annually as follows:~~

12 ~~— a. On July 1, 2026, a total of one million five hundred thousand dollars.~~

13 ~~— b. On July 1, 2027, a total of two millions dollars.~~

14 ~~— c. On July 1, 2028, a total of two million five hundred thousand dollarsthree million~~
15 ~~dollars.~~

16 ~~— 2. The liability limits under this section do not apply to a health care malpractice action or~~
17 ~~claim brought on behalf of an unborn fetus.~~

18 ~~— 3. With respect to actions heard by a jury, the jury may not be informed of the limitation~~
19 ~~contained in this section. If necessary, the court shall reduce the damages awarded by~~
20 ~~a jury to comply with the limitation in this section.~~

21 ~~— SECTION 3. EFFECTIVE DATE. Section 2 of this Act becomes effective on July 1, 2029.~~

22 ~~— SECTION 4. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2029~~
23 ~~and after that date is ineffective.~~

**REPORT OF STANDING COMMITTEE
HB 1349**

Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS** ([25.0937.01001](#)) and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1349 was placed on the Sixth order on the calendar.

25.0937.01000

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1349

Introduced by

Representatives Koppelman, O'Brien, D. Ruby, Vetter

Senators Hogan, Sickler, Roers, Kessel

1 A BILL for an Act to amend and reenact section 32-42-02 of the North Dakota Century Code,
2 relating to liability limits for health care malpractice actions or claims; to provide an effective
3 date; and to provide an expiration date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 32-42-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **32-42-02. Noneconomic damages limited - Reduction of award.**

8 1. With respect to a health care malpractice action or claim, the total amount of
9 compensation that may be awarded to a claimant or members of the claimant's family
10 for noneconomic damage resulting from an injury alleged under the action or claim
11 may not exceed five hundred thousand dollars, one million dollars, regardless of the
12 number of healthcare providers and other defendants against whom the action or claim
13 is brought or the number of actions or claims brought with respect to the injury. The
14 liability limits under this section must be adjusted annually as follows:

- 15 a. On July 1, 2026, a total of one million two hundred fifty five hundred thousand
16 dollars.
- 17 b. On July 1, 2027, a total of one million five hundred thousand two millions dollars.
- 18 c. On July 1, 2028, a total of one million seven hundred fifty two million five hundred
19 thousand dollars.

20 2. The liability limits under this section do not apply to a health care malpractice action or
21 claim brought on behalf of an unborn fetus.

22 3. With respect to actions heard by a jury, the jury may not be informed of the limitation
23 contained in this section. If necessary, the court shall reduce the damages awarded by
24 a jury to comply with the limitation in this section.

SECTION 2. AMENDMENT. Section 32-42-02 of the North Dakota Century Code
is amended and reenacted as follows:

1 **32-42-02. Noneconomic damages limited - Reduction of award.**

- 2 1. With respect to a health care malpractice action or claim, the total amount of
3 compensation that may be awarded to a claimant or members of the claimant's family
4 for noneconomic damage resulting from an injury alleged under the action or claim
5 may not exceed one million dollars. The liability limits under this section must be
6 adjusted annually as follows:
- 7 a. ~~On July 1, 2026, a total of one million five hundred thousand dollars.~~
8 b. ~~On July 1, 2027, a total of two millions dollars.~~
9 c. ~~On July 1, 2028, a total of two million five hundred thousand dollars~~two three
10 million dollars, regardless of the number of healthcare providers and other
11 defendants against whom the action or claim is brought or the number of actions
12 or claims brought with respect to the injury.
- 13 2. The liability limits under this section do not apply to a health care malpractice action or
14 claim brought on behalf of an unborn fetus.
- 15 3. With respect to actions heard by a jury, the jury may not be informed of the limitation
16 contained in this section. If necessary, the court shall reduce the damages awarded by
17 a jury to comply with the limitation in this section.

18

SECTION 3. EFFECTIVE DATE. Section 2 of this Act becomes effective on July 1, 2029.

SECTION 4. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2029
and after that date is ineffective.