



Tort Reform and Current Law

Tort Reform in Wyoming

Paths forward without a constitutional amendment

BY NICK HEALEY, HUSCH BLACKWELL LLP, DENVER, CO

For decades, Wyoming has debated medical malpractice, or tort reform, striving to balance fair compensation for patients harmed by negligence with the need to keep healthcare accessible and affordable. Concerns about rising malpractice insurance premiums, the potential for physician shortages, and unpredictable jury awards have fueled ongoing calls for change. However, Wyoming's constitution presents significant barriers to certain reforms, particularly statutory caps on noneconomic damages such as pain and suffering.

This challenge became clear in 2004, when the Legislature considered a constitutional amendment and related legislation to cap noneconomic damages at \$500,000 for individual providers and \$750,000 for facilities, with higher limits for death or catastrophic injury.¹ The reform package also included mandatory reporting of malpractice claims, public rate hearings, pretrial review panels, and new patient safety reporting requirements. Despite considerable debate and support from lawmakers and the governor, the amendment failed to achieve the required supermajority, reflecting deep divisions over whether such reforms would truly address rising costs and physician shortages or primarily limit patient rights. Wyoming's previous pretrial screening panel requirement

was also struck down by the state Supreme Court as unconstitutional. Wyoming's Supreme Court previously found mandatory pretrial screening panels unconstitutional under the state's guarantees of court access and timely justice, and while a later constitutional amendment permitted such panels, the enabling statute was repealed in 2021.²

Why a Constitutional Amendment is Required in Wyoming

Wyoming's constitution contains strong protections for the right to a jury trial, for full access to the courts, and for laws limiting damages for injury or death.³ Wyoming courts have interpreted these provisions to mean that the legislature cannot limit the amount of damages a jury may award for noneconomic losses, such as pain and suffering, without running afoul of these constitutional guarantees. As a result, unlike in many other states, simply passing a statute to cap noneconomic damages would almost certainly be found unconstitutional in Wyoming. Only a constitutional amendment, explicitly granting the legislature authority to impose such caps, could overcome these barriers.

Wyoming's Current Tort Reform Landscape

Despite these constitutional constraints, Wyoming has implemented several meaningful tort reform measures. The state imposes a two-year statute of limitations for medical malpractice claims, with a discovery rule for cases where injuries are not immediately apparent.⁴ Wyoming law also grants civil immunity for those providing emergency or volunteer healthcare, and during public health emergencies. Further, the Wyoming Governmental Claims Act waives sovereign immunity in certain situations but sets firm caps on damages for claims against public hospitals and government-employed providers.⁵ The state also created the Medical Liability Compensation Account as a statutory framework for a state-administered excess insurance pool, which, though currently dormant, could cover claims exceeding \$50,000, up to \$1,000,000 per physician per year.⁶ Additionally, Wyoming's apology law ensures that statements of sympathy or condolence by healthcare providers cannot be used as evidence in court.⁷

Alternative Tort Reform Strategies

Although statutory caps on noneconomic damages are not possible under the current constitution, Wyoming lawmakers still have several other options. For example, in May 2025, Utah enacted H.B. 503, which reformed medical malpractice laws.⁸ The reforms included repealing the affidavit of merit requirement, clarifying that prelitigation review panels are purely advisory, capping noneconomic damages, and generally shielding providers' personal assets from judgments except in cases of willful misconduct or inadequate insurance. The law also allows providers to recover attorney fees for meritless claims and limits recovery for medical expenses to amounts actually paid rather than billed. While measures like damage caps and asset protections would likely face constitutional hurdles in Wyoming, other procedural reforms from Utah, such as revised calculation of economic damages and non-binding advisory review panels, could be adapted to fit within Wyoming's constitutional framework. One option is to require plaintiffs to file a certificate of merit from a qualified medical expert at the outset of a malpractice claim, as done in several other states.⁹ The state could also implement mandatory mediation or voluntary arbitration programs to encourage early settlements and reduce litigation costs, while still preserving the right to a jury trial if no settlement is reached, as several other states have done.¹⁰ Wyoming could also consider reviving or expanding the Medical Liability Compensation Account to

provide more robust excess insurance coverage for providers, as seen in Nebraska.¹¹

Evidentiary and trial reforms offer further avenues for improvement. Wyoming already has a "medical apology" law, but, like California and Connecticut, could consider placing reasonable statutory limits on attorney contingency fees in medical malpractice cases. By capping the percentage that attorneys can take as fees, the state would help ensure that a greater portion of any recovery goes directly to injured patients, rather than to legal costs, and may dissuade attorneys from pressing marginal cases.¹² Another potential reform is to allow or require periodic payments of large judgments, rather than mandating that all damages be paid as a lump sum, which at least eight other states have done.¹³ Periodic payments, or structured settlements, can help ensure that compensation is distributed fairly over time, supporting the long-term needs of injured plaintiffs and reducing the immediate financial impact on defendants or their insurers. Finally, Wyoming could revisit the collateral source rule, which currently does not permit evidence of payments made to plaintiffs from insurance or other sources to be introduced in court to offset damages. Modifying this rule, as some states have done, would help prevent plaintiffs from receiving double recoveries for the same injury, while still ensuring that plaintiffs are made whole for their actual losses.¹⁴

A Novel Approach: Borrowing from Tort Protection for Power Companies That Take Wildfire Prevention Measures

Another promising approach, inspired by Wyoming's recent wildfire mitigation statute, would be to incentivize healthcare providers to proactively participate in patient safety and quality improvement activities. Under the wildfire law, electric utilities that develop and follow state-approved mitigation plans benefit from a higher legal threshold for liability, plaintiffs must prove gross negligence or willful misconduct, rather than simple negligence, if a wildfire occurs.¹⁵ A similar model could be adapted for medical malpractice: providers who participate in recognized patient safety organizations, engage in regular performance improvement, or contract with certified patient safety or quality improvement organizations could be granted a higher standard of proof in malpractice suits. In these cases, plaintiffs would be required to prove gross negligence or recklessness, rather than mere negligence, if the provider can demonstrate compliance with approved safety protocols and improvement plans. This framework would not bar lawsuits or limit damages, thus avoiding constitutional issues, but would



Tort Reform and Current Law

encourage a culture of safety and continuous improvement while providing meaningful legal protection for providers who make good-faith efforts to enhance patient care.

Conclusion

Although Wyoming's constitution currently blocks statutory caps on noneconomic damages, the state has already adopted several important tort reform measures, such as time limits for filing claims, immunity for emergency and volunteer care, and an apology law. There is still significant room for further reform. By adopting requirements for certificates of merit, implementing mediation or arbitration programs, limiting attorney fees, allowing periodic payments of judgments, and reforming the collateral source rule, Wyoming can achieve many goals of tort reform, such as reducing frivolous litigation, controlling healthcare costs, and ensuring fair compensation for injured patients, without the need for a constitutional amendment. These practical and constitutionally sound options can help improve Wyoming's civil justice system while protecting the rights of both patients and healthcare providers. 

Sources

¹Wyoming Legislature, 2004 Session, SJR2; HB0193.

²State ex rel. Wyoming Ass'n of Consulting Engineers and Land Surveyors v. Sullivan, 798 P.2d 826, 829-31 (Wyo. 1990); Allred v. Bebout, 409 P.3d 260, 267-68 (Wyo. 2018); 2021 Wyoming Session Laws, Ch. 99.

³Wyo. Const. art. 1, §§ 8-9; art. 10, § 4.

⁴Wyo. Stat. § 1-3-107.

⁵These caps are constitutional because Wyo. Const. art. 10, § 4. does not apply to government entities.

⁶Wyo. Stat. §§ 26-33-101 et seq.

⁷Wyo. Stat. § 1-1-130(a)

⁸Utah H.B. 505, 2024 Leg., Gen. Sess. (2025).

⁹Ga. Code Ann. § 9-11-9.1; 231 Pa. Code § 1042.3; Tex. Civ. Prac. & Rem. Code § 74.351.

¹⁰Cal. Civ. Proc. Code § 1295; N.Y. C.P.L.R. § 7550 et seq.; Fla. Stat. § 766.108.

¹¹Neb. Rev. Stat. §§ 44-2825, 44-2829.

¹²Cal. Bus. & Prof. Code § 6146; Conn. Gen. Stat. § 52-251c.

¹³See Cal. Civ. Proc. Code § 667.7; Colo. Rev. Stat. §§ 13-64-203, 13-64-206; Conn. Gen. Stat. § 52-225d; Ind. Code § 34-18-14-4, § 34-18-14-5; Ohio Rev. Code Ann. § 2323.56; Or. Rev. Stat. § 31.250; Tex. Civ. Prac. & Rem. Code § 74.503; Wis. Stat. § 655.015.

¹⁴Colo. Rev. Stat. § 13-64-402; Cal. Civ. Code § 3333.1.

¹⁵H.B. 0192, 67th Leg., Gen. Sess. (Wyo. 2025).



Working for a healthier Wyoming

Supporting the Wyoming Medical Society and honoring our mutual commitment to simpler, more affordable, supportive care for Wyoming citizens.

uhc.com

United
Healthcare®