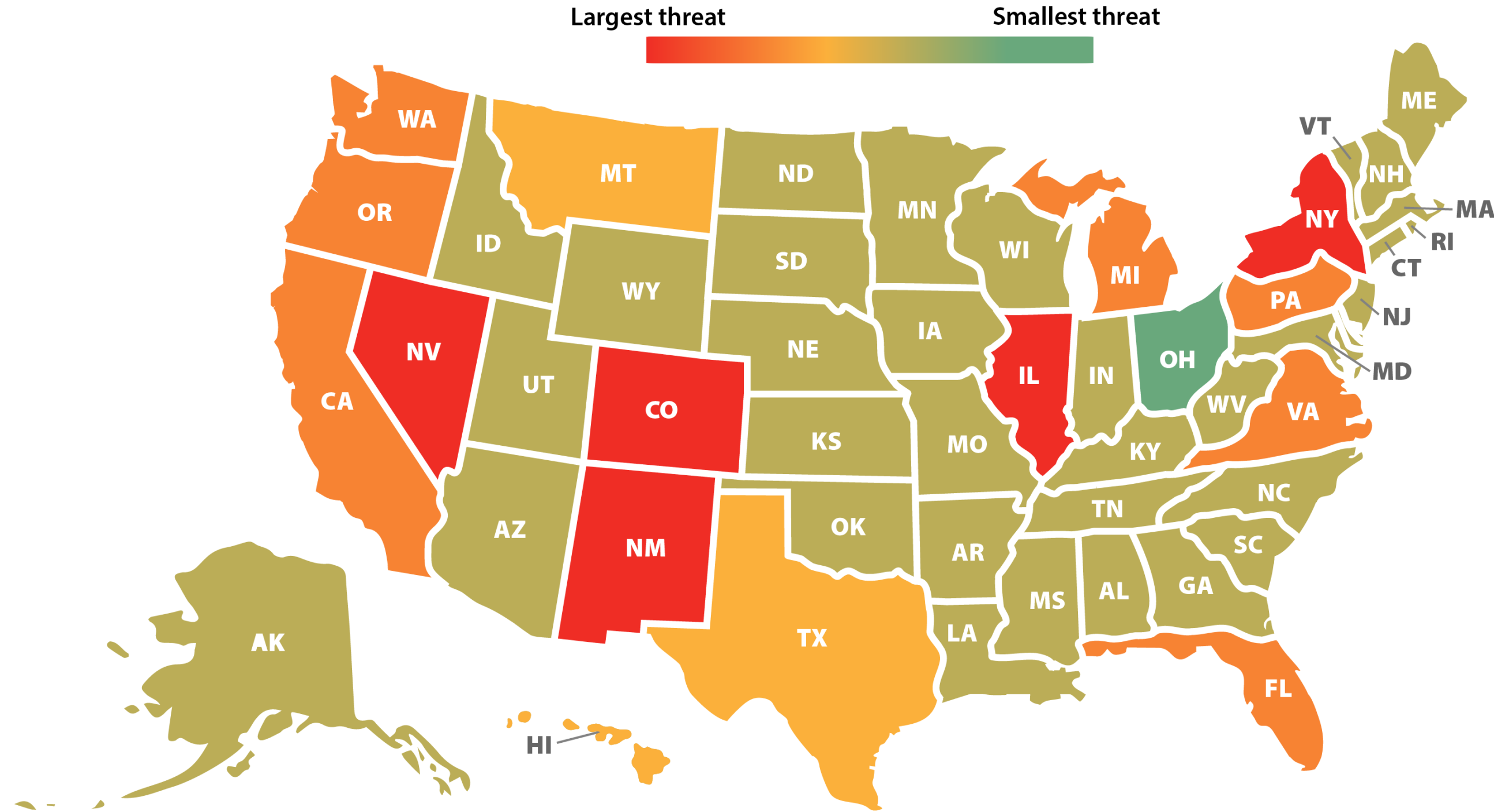


Legislative Threats by State



Each issue of the Government Relations Advocacy Update provides insights into legislative, regulatory, and judicial actions that impact medical liability and the practice of medicine. This issue focuses on issues and activity that we expect to see in some key states and Congress. This year, at least a half dozen bills have been or will be introduced to overturn or increase caps on damages, most of which will have significant momentum behind them.



Colorado

The legislative climate in Colorado has become more challenging after pro-trial lawyer candidates gained seats in the midterm elections of 2022, creating the need for education for many new legislators on the intersection of medical liability and access to healthcare.

Plaintiffs' attorneys are likely to attempt to increase the cap on noneconomic damages (legislatively or via the ballot initiative process), and the Colorado Department of Insurance will create rules regulating insurance companies' use of predictive modeling and algorithms in underwriting, so it is possible this will impact property and casualty insurance sometime in 2023.

Illinois

Punitive damages in wrongful death cases and scope of practice bills involving advance practice providers are expected to be prominent in 2023 in Illinois.

The unique Biometric Information Privacy Act (BIPA) in Illinois may be amended by plaintiffs' attorneys to make it easier to bring consumer class actions. The state continues to be challenging as Cook County and Chicago are known for high verdicts and medical liability relief is unlikely to be coming from state government.

Nevada

Plaintiffs' attorneys are expected to introduce legislation to increase or repeal the cap on noneconomic damages in Nevada.

TDC Group is working with a state coalition and retaining legislative counsel to combat these legislative efforts as the bill is expected to have significant momentum and support behind it in the legislature; however, the newly elected governor is likely to seek compromise legislation rather than a full-scale repeal of Nevada's liability reforms.

New York

In early 2023, the problematic wrongful death legislation was vetoed. A new version of the bill likely will be introduced this year. Other issues on the table include bad faith, equity in the tort and healthcare systems, insurance data regulations and Section 18 excess professional liability funding.

TDC Group has a set of proactive proposals that we will seek to have introduced to countervail the plaintiffs' attorneys' wish list.

New Mexico

New Mexico remains a high-watch state. The governor of New Mexico was re-elected and the state's legislators who are favorable to the New Mexico Trial Lawyers Association have increased their majority.

New Mexico made dramatic changes to the state's medical liability laws with the passage of HB 75 in 2021, followed closely by clean-up legislation in a special session, HB 11b. As expected, the results of this legislation have been disastrous for New Mexico's healthcare providers and their patients.

TDC Group continues to work with our allies within the state to try to change the narrative, but members should prepare for further detrimental changes from the 2023 legislative session.

California

California's MICRA reforms were restructured in 2022, making a head-on assault unlikely.

The new wave of legislators and the possibility of trial lawyers tweaking other liability laws may impact members of TDC Group, requiring a continued concerted effort to educate policymakers on MICRA's importance.

Florida

Republicans expanded their majorities in both chambers of Florida's state legislature in the 2022 elections, making inroads in traditionally Democrat-voting counties.

Governor DeSantis is open to considering medical liability tort reform in 2023, and TDC Group is working with industry allies to develop a legislative proposal to improve the medical liability climate in Florida.

Michigan

Predominant insurance and healthcare topics in 2023 may shift toward issues such as bad faith, interest rates, and wrongful death in Michigan due to the unexpected outcome of the 2022 election with Democrats gaining majorities in both chambers and a democrat holding the Governor's office.



Oregon

Oregon Democrats continue to control the legislature and maintain strong majorities in both houses.

It is likely that we will see legislation regarding bad faith, insurance unfair trade practices, credit scoring, data privacy, or an attempt to raise or eliminate the cap on noneconomic damages in wrongful death cases.

Pennsylvania

The Pennsylvania state government is divided with a tight Democratic majority in the House and Republicans controlling the Senate.

Venue remains a key issue heading into the 2023 legislature. Along with our coalition partner, we will advocate for reversing the court rule that allows venue shopping and passing legislation that establishes subject matter jurisdiction over medical liability cases to the county where the cause of action arises.

Virginia

Republicans hold the House and recently elected governor in Virginia while Democrats hold the Senate.

A cap on medical liability damages and telemedicine rules are expected to be discussed in the 2023 legislative session, and scope of practice, including advanced practice providers, may also be debated.

Washington

The Washington State Supreme Court will hear arguments and decide on the constitutionality of the statute of repose in medical malpractice cases.

The plaintiffs' attorneys plan to refile a bill to raise prejudgment interest rates, file a new bill to expand the group of individuals who may sue for wrongful death, and file multiple bills to expand the use of private attorney general actions (PAGA) to enforce laws.

Montana

Plaintiffs' attorneys are likely to attempt to increase or repeal the state's cap on noneconomic damages in Montana.

Though the state has had a good legislative climate and the control of the state was not changed in the November 2022 midterm elections, new legislators will need education on issues impacting members of TDC Group.

The Doctors Company Government Relations team will continue its relentless commitment to supporting medical liability and to safeguarding patient access to care, while defending reforms that are in place and protect against legislation that would adversely impact our members and physicians across the country.

For additional information, please visit thedoctors.com/advocacy.

Texas

Republicans control both chambers and the Governor's office after the 2022 midterm elections in Texas.

The 2023 Texas legislative session will feature a bill to index the state's cap on noneconomic damages to the Consumer Price Index, and a series of pre-filed bills aimed at prohibiting healthcare professionals from providing gender-affirming care.

Georgia

Republicans in Georgia maintained control over the legislature and Governor's office after the 2022 midterm elections, and the state is expected to remain stable in relation to medical liability issues.

With many new members and a new House Speaker (who is open to tort reform legislation), it is expected that little legislation will move quickly in the state. The legislature is likely to look to Governor Kemp for issues to pursue, few of which are anticipated to impact our members.

Maryland

The Maryland Senate's Medical Liability Workgroup is delivering a report to identify solutions to ease the rising cost of MPL and diminished access to healthcare.

Past legislation regarding collateral source evidence and a birth injury fund may resurface, although the success of these efforts are uncertain as Democrats have increased their majority in the state legislature and will control the executive branch for the first time since 2015.

Ohio

Both legislative chambers and the governor's office are held by Republicans in Ohio.

In 2022, we saw damages cap litigation (settled); fortunately, the 2022 election tilted the Supreme Court back toward a conservative majority, so the risk of a bad caps case has been reduced.

