STATES	LIMITS ON DAMAGE AWARDS	GENERAL ARBITRATION REQUIREMENTS	MED-MAL PRE-TRIAL SCREENING OR ARBITRATION	CURRENT LEGISLATIVE ACTIVITY
ALABAMA	Limits declared Unconstitutional by State Supreme Court. Moore v. Mobile Infirmary Ass'n., 592 So.2d 156(Ala. 1991); Smith v. Schulte, 671 So.2d 878 (Ala.1993). **§6-11-21**—later, the Legislature enacted a Cap on punitive damages in physical injury cases to the greater of 3x $1.5 million or compensatory damages. The cap does not apply to wrongful death or intentional injury cases.	**§6.6.16 -** Nothing in this section shall prevent any person or persons from settling any controversy by reference to arbitration. **§6-6-20** - Mandatory non – binding mediation by agreement, at request of any party, or by court order. Sanctions for non-compliance.	**§6.5.485.** After a claim has arisen the parties may voluntarily agree to arbitration in writing. Requires AAA rules. Agreement must be: -in writing, and -Signed by both parties. Any such agreement shall be valid, binding, irrevocable, and enforceable, save upon such grounds as exist in law or in equity for the revocation of any contract.	None.
ALASKA	**§09.17.010.** Noneconomic damages limited to $400,000 or plaintiff's life expectancy calculation. For severe Injury, $1 million or life expectancy calculation. **§9.17.020.** Punitive damages limited to $500,000 or 3X compensatory damages. **§9.55.549**— Med. Mal. Non-economic damage limit for injury at $250,000, $400,000 for death or severe permanent physical impairment. This limit does not apply to reckless or intentional misconduct.	**§9.43.010**. A written agreement to submit an existing controversy to arbitration, or a provision in a written to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable except upon grounds that exist at law or equity for the revocation of a contract	**§09.55.535.** Voluntary arbitration. A pre-treatment agreement cannot be a prerequisite to receiving care or treatment. Revocable by patient within 30 days. Needs to be re-executed at each hospital admission. Attorney General must approve form. **§09.55.536.** Expert advisory panel used after lawsuit is filed. Must issue report within 30 days of selection on the facts of the case. Report is admissible evidence in trial.	**SB 67 enacted 6/7/05 and effective 9/5/05** Limits med-mal non-economic damages at $250,000
ARIZONA	None. Limits constitutionally prohibited.	**§12-1501** A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**§12-583.** Good cause hearing determines if a basis exists to go to trial. **§12-133**. Arizona does not mandate reference of a medical malpractice action to an arbitrator or panel but requires the Superior Courts to set a limit (that is less than $50,000) for *all claims* where agreed damage amount is less than the court set limit and requires those be submitted to arbitration. (emphasis added). **A.R.C.P. 16(c).** The Arizona Rules of Civil Procedure do require, within 60 days of filing a medical malpractice claim, the court and the parties are to discuss ADR options.	**SB 1036 enacted 4/25/05**—apologies by providers inadmissible in court as evidence of liability. **SCR 1035**—to amend constitution to permit damage award limits and mandatory dispute resolution in Med-Mal. Suits. Held in committee.

ARKANSAS	**§16-55-205 – 209.** Punitive damages limited to $250,000 per plaintiff or 3X amount of economic damages but not to exceed $1 million. Limits adjusted for inflation at 3-year intervals beginning in 2006. Contingent on proof of recklessness or intentional malice.	**§16-108-201--** A written agreement to submit any existing controversy, or any controversy thereafter arising between the parties bound by the terms of the writing is valid, enforceable, and irrevocable, save upon such grounds as exist for the revocation of any contract. This does not apply to personal injury or tort matters	**§16-108-102.** Voluntary arbitration and dispute resolution. **§16-7-101.** Permits courts to set mediation and/or arbitration to encourage their use to promote settlement of cases. **§16-114-201 et seq.** general Med-Mal. Statutes.	None.
CALIFORNIA	**Civil Procedure Code §3333.2.** $250,000 limit for non-economic damages. There is no cap on punitive damages. Baker v. Sadick, 162 Cal.App. 3d 618, 208 Cal. Rptr. 676 (4th Dist. 1984).	**Civil Procedure Code §1281.** A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract.	**Civil Procedure Code §1295.** Voluntary arbitration contract. Entering contract removes option for trial and is binding. Patients have 30-day rescission period. This Section provides a 'safe harbor' presumption that agreements in compliance with §1295 rules on format, font size and color, and signature are not unconscionable, nor adhesion contracts, nor otherwise improper.	None.
COLORADO	**§13-64-302.** $1 million total limit on all damages; $300,000 non-economic limit. **§13-21-102**. Punitive damages are capped at the amount of actual damages awarded.	**§13-22-201 et seq.** An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.	**§13-22-311.** Court may refer case to mediation. **§13-64-403**—Arbitration agreements are to be voluntary and not a condition of service but are binding. Specifies language and font size requirements. Also, insurers cannot require arbitration agreements as a condition of providing med-mal coverage.	None.
CONNECTICUT	None.	**§52-408--** An agreement in any written contract to settle by arbitration any controversy thereafter arising out of such contract shall be valid, irrevocable and enforceable, except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally.	**§38a-32 and 33.** Medical Screening Panel selected when all parties agree. Proceedings confidential. **§38a-36**-unanimous panel findings admissible at trial.	**SB 515** bifurcate into liability and damage phases **SB 272**-limit non-economic damages to $250,000. **SB 131**-mandatory mediation in med-mal complaints. **SB 267**- cap attorney fees at non-economic damages All in committee.
DELAWARE	**18 §6855.** Punitive damages only for malicious intent to injure or willful or wanton misconduct. No mandated limit.	**10 §5701**. A written agreement to submit to arbitration any controversy existing at or arising after the effective date of the agreement is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**18 §6803-6812.** Mandatory medical negligence review panel part of court review; panel's findings negative findings admissible as prima facie evidence of negligence but not conclusive.	None.

DISTRICT OF COLUMBIA	None.	**§16-4301** written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**DC Court Arbitration Rules, rule 1 et seq.** Voluntary arbitration for all civil cases. Arbitrator decision is final but any party can challenge in court. Finding of arbitrator can be admitted as evidence but cannot be identified as such and arbitration cannot be mentioned.	None.
FLORIDA	**§766.118.** Non-economic damages limited to $500,000 per claimant. Death or permanent vegetative state, non-economic damages not to exceed $1million. **§768.73.** Punitive damages limited to the greater of 3X amount of economic damages or $500,000. If deliberate intent to harm, no limit on punitive damages.	**§682.02** Two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of the agreement, or they may include in a written contract a provision for the settlement by arbitration of any controversy thereafter arising between them relating to such contract or the failure or refusal to perform the whole or any part thereof. Such agreement or provision shall be valid, enforceable, and irrevocable without regard to the justiciable character of the controversy.	**§766.107-108. Voluntary non-binding arbitration.** Either party may request or the Court may require submission of claim to non-binding arbitration that limits what is admissible at trial. If not agreed to, a mandatory mediation and settlement conference is to be held prior to trial. **§766.207-209 Voluntary Binding Arbitration.** Once chosen, is exclusive remedy for parties. Refusal to accept other party's offer to arbitrate has financial implications. Defendant's refusal entitles successful claimant at trial to pre-judgment interest and attorney fees up to 25% of award. Claimant's refusal to arbitrate will limit non-economic damages to $350,000. The damage cap in the arbitration statute has been held constitutional. University of Miami v. Echarte, 618 So. 2d 189 (Fla. 1993), cert. denied, 510 U.S. 915.	None. Voters adopted Constitutional Amendments to revoke medical licensure of physicians are found guilty of malpractice more than 3 times in 5 years. Not directly on point but may encourage non-legal dispute resolution options to avoid complaints.
GEORGIA	**§51-12-5.1.** $250,000 limit on punitive damages, unless demonstrated intent to harm.	**§9-9-1** A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit any controversy thereafter arising to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award.	**§9-9-61 thru 63.** Voluntary arbitration subject to court review; **§9-9-62**. No arbitration agreement is binding if entered into prior to the occurrence of the alleged malpractice or before a dispute or controversy occurs unless an attorney represented claimant at the time the agreement was entered into. **§9-9-80.** Arbitration findings of fact are conclusive on appeal of an award, unless based on fraud, contrary to law, or not supported by the evidence.	**SB 3—**limits non-economic damages at $350,000 against provider, $350,000 against facility with aggregate limit of $1.5 million. Required periodic payments on award greater than $350,000. Offer of apology not admitted as evidence. PASSED and EFFECTIVE on Feb. 16, 2005.

HAWAII	**§663-8.5, 8.7.** $375,000 limit for pain and suffering damages.	**§658A-1 et seq.** An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.	**§601.20.** Mandatory non-binding arbitration for all cases involving $150,000 or less. **§671-11 - 20.** Mandatory submission of malpractice claims to a Medical Claim Conciliation Panel (MCCP); Panel will determine if negligence occurred, economic, non-economic and punitive damages. Either party can proceed to trial but results not admissible at trial. **§671-16.6** Subsequent to filing with the MCCP, Parties can agree in writing to use an arbitration provider with approval of the MCCP Director.	**SB 757 & HB 648** Held up in committee. Bills would cap non-economic damages at $250,000, limit punitive damages to $250,000 or 3x compensatory damages, limits attorney fees.
IDAHO	**§6-1603.** $250,000 limit on non-economic damages, adjusted annually according to the state's adjustment of the average annual wage. **§6-1604.** Punitive damages limited to $250,000 or 3X compensatory damages.	**§7-901-** A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**§6-1001 thru 1011.** Mandatory submission of claim to hearing panel established by the Idaho State Board of Medicine prior to filing suit. Results are non-binding and not admissible at trial.	None.
ILLINOIS	**§735 5/2-1115.** Punitive damages not recoverable in medical malpractice cases. In 1995 Illinois passed a $500,000 limit on non-economic damages in medical malpractice cases but was subsequently declared unconstitutional. Best v. Taylor Machine Works, 689 N.E.2d 1057 (Ill. 1997).	**§710 5/1.** Written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable save upon such grounds as exist for the revocation of any contract, except that any agreement between a patient and a hospital or health care provider to submit to binding arbitration a claim is also subject to the Health Care Arbitration Act.	**§710 15/1 et seq. Healthcare Arbitration Act.** Arbitration not mandatory but voluntary by agreement of the parties. -The agreement must be wholly separate, not part of any other contract. -The agreement cannot be a condition to receive care. -patient, or family where appropriate, must be given copy during discharge planning process. -may be cancelled at the later of 60 days after signing or the discharge from hospital or last day of treatment by provider. -specific language required immediately above signature. **§735 5/2-1001A.** Arbitration may be court ordered for cases totaling less than $50,000.	**SB 475—**caps non-economic damages at $500,000 for all plaintiffs, apology not admissible at trial, creates Sorry Works pilot program. SIGNED and EFFECTIVE 8/25/2005

INDIANA	**§34-18-14-3.** Liability limited to $250,000 per health care provider with aggregate total limit of $1,250,000. Any award beyond limits for individual providers to be covered by Patient Compensation Fund. **§34-51-3-4** Punitive damages capped at greater of $50,000 or 3x compensatory damages.	**§34-57-2-1 et seq.** A written agreement to submit to arbitration is valid, and enforceable, an existing controversy or a controversy thereafter arising is valid and enforceable, except upon such grounds as exist at law or in equity for the revocation of any contract. **§34-57-1-3**. All persons, except minors and mentally incompetent persons, may, by an instrument in writing, submit a controversy for arbitration.	**§34-18-8-1 et seq.** Unless all parties agree in writing to bypass the Medical Review Panel (MRP), all med-mal claims must first be submitted to the MRP and the panel has issued its opinion before commencing in court. **§34-18-10-1 et seq**. describes the MRP process. Panel is to determine whether evidence supports conclusion provider failed to act within standard of care. Panel findings are admissible at trial, but not conclusive.	None.
IOWA	None.	**§679A.1** **(1)** A written agreement to submit to arbitration an **existing controversy** is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the written agreement. (2) A provision in a written contract to submit to arbitration a **future controversy arising** between the parties is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the contract. **This subsection shall not apply to any of the following:** a) A contract of adhesion. … c) **Unless otherwise provided in a separate writing executed by all parties to the contract, any claim sounding in tort whether or not involving a breach of contract.**	**§679A.1** Generally permits voluntary arbitration agreements. **§147.135 et seq.** covers peer review and experts used in malpractice claims.	**HF 704** – limit non-economic damages to $250,000 unless actual malice proved referred to committee March 2005.
KANSAS	**§60-19a02.** $250,000 limit for non-economic damages per plaintiff. **§60-3702.** Punitive damages limited to lesser of defendant's highest gross income for prior 5 years or $5 million. If profitability of misconduct exceeds limit, court may award 1.5 times profit instead, Judge determines punitive damage. Punitive damages are not available in a wrongful death case. Smith v. Printup, 938 P.2d 1261 (Kan. 1997).	**§5-401-** A written agreement to submit any **existing controversy** to arbitration is valid, enforceable and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract; (b) Except as provided in subsection (c), a provision in a written contract to submit to arbitration any **controversy thereafter arising** between the parties is valid, enforceable and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract; (c) **The provisions of subsection (b) shall not apply to: (1) Contracts of insurance … or (3) any provision of a contract providing for arbitration of a claim in tort.**	**§65.4901, §60.3502.** Upon request of any party, or judge's own motion, a medical malpractice action must be submitted to a medical screening panel comprised of one plaintiff selected healthcare provider, one defendant healthcare provider, one select by the previous members and a non-voting attorney. Kan. Stat. Ann. § 65-4901. The panel's written report is admissible at trial and any party may call members of the panel at trial. Either party can proceed with court action if dissatisfied with the decision of the medical screening panel. Kan. Stat. Ann. § 65-4905.	**SB 140** – looks to modify §5-401 for medical torts. A provision of a contract providing for a claim of tort between a healthcare provider and a patient shall be valid and enforceable only if: a) Provision is not a condition precedent to receiving care; b) Patient can void agreement within 30 days of signing it; and c) The arbitration agreement is a separate writing signed by the patient.

KENTUCKY	**Ky Constitution § 54**. The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property.	**§417.050** A written agreement to submit any existing controversy to arbitration or a provision in written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract.	**§454.011.** Courts encouraged to make referrals to mediation prior to trials. No specific requirement for med-mal disputes.	**SB 1, HB 146.** Proposal to amend Constitution to permit the General Assembly to limit non-economic damages and punitive damages in Med-Mal. lawsuits, require mandatory ADR prior to filing suit. Did not pass senate.
LOUISIANA	**RS §40:1299.42.** Health care provider insured by state has their liability limited to $100,000. $500,000 aggregate limit for total recovery excluding future medical care award. Any award in exceeding provider liability paid from Patient's Compensation Fund.	**RS §9:4201** A provision in any written contract to settle by arbitration a controversy thereafter arising out of the contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**RS §9:4231.** The decisions to enter into a medical or dental contract shall be voluntary on the part of the patient, and on the part of the medical or dental practitioner or facility **RS §40:1299.47.** All malpractice claims shall be reviewed by a Medical Review Panel unless the parties agree to waives use of the panel or agree to submit to a lawfully binding arbitration procedure, The panel chairperson is to be selected within 1year of filing claim and decision is to be made within 1 year of chairperson's appointment. The panel's report is considered an expert opinion and admissible in subsequent proceedings.	None.
MAINE	**18-A §2-804.** Damage limits only in wrongful death cases. Loss of companionship damages limited to $400,000, punitive damages limited to $75,000.	**14 §5927.** A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**24 §2851-59.** Mandatory filing to pre-litigation screening panel. All parties can agree to bypass screening panel and proceed to trial. Panel findings cannot be used in subsequent litigation unless the panel decision is unanimous.	**LD 1378** Limit non-economic damages to $250,000, punitive damages to $75,000, expression of apology not admissible PASSED and EFFECTIVE 6/10/2005 (Ch. 376)

MARYLAND	**Courts & Judicial Proc. §3-2A-09.** Non-economic damages limited to $650,000 from 2005 to 2008, increasing thereafter by $15,000 per year beginning on January 1, 2009.	**Courts & Judicial Proc. §3-206**. A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy arising between the parties in the future is valid and enforceable, and is irrevocable, except upon grounds that exist at law or in equity for the revocation of a contract.	**Courts & Judicial Proc. §3-2A-04, 3-2A-06A.** A medical injury claim is to be filed with the Health Care Alternative Dispute Resolution Office unless both parties agree to waive arbitration. **§3-2A-06-C.** Mandatory ADR or mediation within 30 days of filing defendant's answer or defendant's certificate of qualified expert, whichever is later. No mandatory mediation if court finds it will be unproductive or all parties agree not to participate. §**3-2A-06**- Panel to determine liability and damages. Findings are admissible and presumed correct in any subsequent court proceeding. Party who rejects panel decision and does not obtain a more favorable award in court liable for court costs.	**2005 MD HB 114** passed senate but died in house would permit physician apology but prevent use as evidence or admission of liability. **2005 MD SB 221, HB 301** Limit non-economic damages to $500,000, periodic payment of wards.
MASSACHUSETTS	**231 §60H.** $500,000 limit for non-economic damages, some exceptions released from limitations. No caps on punitive damages.	**251 §1.** A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties shall be valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**231 §60B.** Mandatory submission of claims to medical malpractice court tribunal, decision admissible at trial. If the tribunal finds for defendant, claimant must post bond in order to proceed to trial.	None.
MICHIGAN	**§600.1483.** $280,000 limit on non-economic damages; increased to $500,000 limit for severe permanent injury like spinal cord injury, brain injury, etc… Limit adjusted annually by state treasurer according to CPI. **§600.1483** was declared unconstitutional in Wiley v. Henry Ford Cottage Hosp., 668 N.W.2d 402 (Mich. App. 2003), but because of court rules, this holding was not valid precedent due to prior ruling in Zdrojewski v. Murphy, 657 N.W.2d 721 (Mich. App. 2002) declaring it constitutional.	**§600.5001.** A provision in a written contract to settle by arbitration under this chapter, a controversy thereafter arising between the parties to the contract, with relation thereto, and in which it is agreed that a judgment of any circuit court may be rendered upon the award made pursuant to such agreement, shall be valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the rescission or revocation of any contract.	**§600.4903 - 4919.** Mandatory review by mediation panel. Findings not admissible at trial. **§600.4921** A party may object to findings and proceed to trial but must pay opposing party's trial costs unless they obtain a more favorable verdict. **§600.2912g**. Voluntary arbitration binding if total damages claimed less than $75,000.	**HB 4259** statement of sympathy not admission of liability and not admissible as evidence at trial.

MINNESOTA	**§549.20.** No punitive damages limit but only allowed if claimant is able to prove deliberate disregard to safety. Award subject to judicial review.	**§572.08** A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**§484.73** Court districts are authorized to establish mandatory non-binding arbitration. Judge can order non-binding arbitration, whether the district has established an ADR system, if claim is greater than $7,500. **§145.682.** Plaintiff must consult with expert prior to trial to determine validity of claims.	**SF 2131, HF 1464** to limit non-economic damages to $250,000, punitive amages limited to $250,000 and to be paid to Minnesota Comprehensive Health Association. Not out of committees.
MISSISSIPPI	**§11-1-60. N**on-economic damages subject to $500,000 limit on. **§11-1-65.** Punitive damages only awarded if willful malice or gross negligence proved. Court determines if award granted and amount. Damages limited based on Defendant's net worth (for example 2% if < $50mm).	**§11-15-1**. All persons, except infants and persons of unsound mind, may, by instrument of writing, submit to the decision of one or more arbitrators any controversy which may be existing between them, which might be the subject of an action, and may, in such submission, agree that the court having jurisdiction of the subject matter shall render judgment on the award made pursuant to such submission.	**§11-15-1.** Voluntary arbitration must be agreed to in writing. **§11-1-58.** Malpractice complaint filed must be accompanied by certificate stating that plaintiff's attorney consulted with at least 1 medical expert qualified to render testimony on standard of care.	**HB 528 died in committee** would have required medical review party unless all parties opt out, losing party to pay attorney fees for proceeding to court
MISSOURI	**§538.210.** Non-economic damages limited to a total of $350,000. In March 2005, the Governor signed law that repealed the inflation adjustment that had increased this limit to $579,000 for 2005. **§510.265.** Punitive damages capped at greater of $500,000 or 5x net judgment awarded defendant. **§510.263.** Tort trials are bifurcated, first to determine liability and amount of compensatory damages and whether liable for punitive damages. 2nd step is to determine amount of punitive damages. .	**§435.350**. A written agreement to submit any existing controversy to arbitration or a provision in a written contract, except contracts of insurance and contracts of adhesion, to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**§435.460.** Particular wording and font size indicating arbitration clause in agreement and must be adjacent to or above signature. **§538.225.** Must have affidavit of healthcare provider as to merits of claim to proceed. **§538.229.** Expressions of sympathy are not admissible as evidence at trial. **§537.067**. Defendant > 51% liable, joint & several liability. If < 51% at fault, liable only for % of liability	**Governor signed HB 393 March 29, 2005 – provisions included at left.**

MONTANA	**§25.9.411.** $250,000 limit on non-economic damages. **§27-1-220; 27-1-221.** Liability for punitive damages determined by court, capped at the lesser of 3% of defendant's net worth or $10 million. Defendant must have been proven guilty of deliberate malice.	**§27-5-114.** (1) A written agreement to submit **an existing controversy** to arbitration is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract. (2) A written agreement to submit to arbitration any **controversy arising between the parties after the agreement is made** is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract. **This subsection does not apply to:** **(a) claims arising out of personal injury, whether based on contract or tort**	**§27.6.101 et seq.** The Montana Medical Legal Panel Act requires all malpractice claims be submitted to the panel for review unless voluntary arbitration agreed to. No court action can be brought until the Panel has made its decision. Findings of the panel are not admissible as evidence in court.	None.
NEBRASKA	**§44-2825.** No cap if provider is not a member of the state's excess liability fund. If provider is a member, total damages per provider capped at $200,000 with an aggregate limit of $1,750,000. Any excess of total liability of all health care providers paid from Excess Liability Fund. Punitive Damages not allowed under state law. Miller v. Kingsley, 230 N.W.2d 472 (Neb. 1975)	**§25-2602.01.** A written agreement to submit any **existing controversy** to arbitration is valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract. (b) A provision in a written contract to submit to arbitration **any controversy thereafter arising** between the parties is valid, enforceable, and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract, if the provision is entered into voluntarily and willingly. **Subsection (b) of this section does not apply to:** **(1) A claim arising out of personal injury based on tort**;	**§44-2840.** Mandatory submission of malpractice claims to a Medical Review Panel. No court action can be commenced until opinion of panel is rendered. Panel decision is non-binding. Claimant can waive right to a panel review and proceed to court. **§44-2844**. Medical Review Panel report is admissible as evidence in subsequent trial.	None.
NEVADA	**§41A.035.** $350,000 limit for non-economic damages added by 2004 ballot initiative. **§41A.045.** No longer Joint & Several liability. 2004 Ballot Initiative changed to several liability only. **§42.005.** $300,000 or 3 times compensatory damages limit on punitive damages, only awarded by court for fraud, oppression, or malice.	**§ 38.219.** An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.	**§41A.081.** All parties, insurers and attorneys required to participate in settlement conference before district judge other than the trial judge. **§41A.085**. The judge can recommend, not mandate, settlement for provider's malpractice policy limits.	**Recent ballot initiative passed Nov. 2004 to provide non-economic damage limits.**

NEW HAMPSHIRE	None. New Hampshire has attempted to impose caps on damages in medical malpractice actions and personal injury actions but both attempts have been ruled unconstitutional. Carson v. Mauer, 424 A.2d 825 (N.H. 1980); Brannigan v. Usitalo, 587 A.2d 1232 (N.H. 1991). **507:16**. New Hampshire has outlawed punitive damages unless punitive damages are expressly provided by statute.	**§542:1.** A provision in any written contract to settle by arbitration a controversy thereafter arising out of such contract, or an agreement in writing to submit to arbitration any controversy existing at the time of the agreement to submit, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**519-A:1, 2.** Claimant may informally and voluntarily submit to hearing panel prior to beginning litigation. Panel to have layman, doctor selected by court, judicial representation. Unless both parties agree to the result of the panel, they can proceed to trial.	**NH SB 214; HB 702.** Creates medical screening panels that would not preclude court action. Pending before legislative bodies.
NEW JERSEY	**§2A:15-5.14.** Limit on punitive damages of the greater of $350,000 or 5 x compensatory damages. No cap on non-economic damages	**§2A:23B-6.** An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.	**§2A:23A-20.** Unless parties have already agreed to arbitrate, mandatory arbitration of medical claims under $20,000; voluntary if over $20,000. **§2A:53A-39.** Presiding judge may refer malpractice action to dispute resolution process within 30 days after end of discovery.	**SB1361, AB 1513** would limit non-economic damages to $250,000. Has not passed committee. **SB 2526 AB 4080** would cap liability at $250,000 for emergency care.
NEW MEXICO	**§41-5-6 & 7.** $600,000 total limit on all damages. Health care providers personally liable up to $200,000; any judgment in excess paid from Patient's Compensation Fund.	**§44-7A-3** An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.	**§41-5-14 thru 20.** Mandatory submission of malpractice claims to hearing panel; No court filing until decision is rendered. Panel report is non-binding and not admissible as evidence in court.	None.
NEW YORK	None.	**McKinney's CPLR § 7501.** A written agreement to submit any controversy thereafter arising or any existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award.	Not mandated, but permits voluntary agreements to arbitrate under **§7501** **McKinney's CPLR §3045.** When liability is conceded, either party may call for arbitration of damages and follow § 7501 et seq. **McKinney's CPLR § 7551 et seq. Health Care Arbitration** states that health care arbitration agreements follow the general arbitration act §7501.	**S 3035, A 5674, S4191** Proposal to limit non-economic damages to $250,000, requires periodic payments if damages are over $50,000. **S36** proposal to repeal prohibition on contingent fees for medical malpractice claims.

NORTH CAROLINA	**§1D-25.** Limit on punitive damages is the greater of 3X compensatory damages, or $250,000. No limit on compensatory or non-economic damages.	**§ 1-569.6** An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for revoking a contract.	**§7A-38.1.** Mandatory pre-trial, mediated settlement conference for all civil actions filed in Superior Court. **R Civ. Proc. §1A-4, 9(j)** requires medical expert to certify standard of care was not met.	**HB 1498 -** Caps non-economic damages at $350,000, future damages paid over time, limits on attorney contingency fees. Introduced 4/2005.
NORTH DAKOTA	**§32-42.02.** Non-economic damages limit of $500,000. **§32-03.2.08.** Economic damage awards in excess of $250,000 subject to court review for reasonableness. **§32-03.2.11-** punitive damages capped at the greater of$250,000 or 2x compensatory damages. No cap on punitive damages.	**§32-29.3-06 -** An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.	**§32-42.03.** Attorneys must disclose alternative dispute resolutions to both parties; Good faith effort to resolve dispute required. Failure of good faith participation in ADR can lead to sanctions or paying court costs of other party.	**HB 1386-**requiring mandatory ADR of malpractice prior to filing with waiver with agreement of all parties. Passed house, failed in senate.
OHIO	**§2323.43.** No limits on economic damages. Non-economic damages limited to $250,000 or 3x economic damages with a maximum of $350,000 per plaintiff or $500,000 per occurrence. Severe permanent injury or disfigurement will increase the maximum non-economic limits to $500,000 per plaintiff or $1mm per occurrence.	**§2711.01** A provision in any written contract to settle by arbitration a controversy that subsequently arises out of the contract, or out of the refusal to perform the whole or any part of the contract, or any agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, or arising after the agreement to submit, from a relationship then existing between them or that they simultaneously create, shall be valid, irrevocable, and enforceable, except upon grounds that exist at law or in equity for the revocation of any contract.	**§2711.21.** Parties can enter Voluntary arbitration agreements, whether binding or non-binding. Decision is not admissible as court evidence. **§2711.22** A written arbitration agreement between patient and providers entered into prior to receiving care is binding, valid and enforceable once signed by all the parties. **§2711.23** Arbitration agreement can't be condition of receiving care, must be revocable by patient within 30 days after signing, requires 3 person arbitration panels and must be a wholly separate document. **§2711.24** Use of specific language and font size creates presumption of validity unless procured through fraud, coercion, or inability to understand the language it is written in.	**SB 88** introduced 3/2005 to mandate 5 year pilot program requiring ADR in malpractice cases.

OKLAHOMA	**63 §1-1708.1F.** $300,000 limit on non-economic damages in all malpractice cases; limit lifted in claim arising from obstetric or emergency room care. Also lifted in case of wanton or willful conduct. **23 §9.1.** Punitive damages based on malice capped at greater of $500,000, 2x actual damages or financial benefit obtained from action.	**Eff. 6/6/2005, repeal of old UAA (15 §801 et seq.) and replacement with new UAA (not in Westlaw yet as of 6/21/05 but found in 2005 Ok Sess. Law 364).** **New language--** **12 § 1857** - An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.	**63 §1-1708.1E.** Affidavit to be submitted by plaintiff stating consultation with qualified expert; includes written opinion from expert that act or omission constituted professional negligence and claim is meritorious. **63 §1-1708.1H -** expression of sympathy not admissible as evidence.	**2005 HB 2032**—cap punitive damages based on net worth and require unanimous jury on liability and amount of award. Referred to committee. **2005 HB 2047 -** would limit attorney fee based on amount recovered. (Died in conference)
OREGON	None**.** **§31.710** established a $500,000 limit on non-economic damages but held unconstitutional by Lakin v. Senco Prod. Inc., 987 P.2d 463 (Or. 1999) 2004 ballot measure to institute non-economic damage limits rejected by voters. **§31.740.** Punitive damages not awarded if practitioner is found to have been acting in scope of duties and without malice. Facilities are not considered practitioners.	**§36.620** An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.	**§31.250.** All parties and attorneys to participate in some form of dispute resolution within 270 days of filing unless case is settled or parties voluntarily waive in writing. Failure to participate or failure to act in good faith sanctionable by court.	**None.**
PENNSYLVANIA	None. Constitutionally prohibited. **40 §1303.505** Punitive damages in medical malpractice limited to 200% of compensatory damages. Punitive damages granted only if defendant found guilty of willful misconduct or reckless disregard.	**42 §7303** A written agreement to subject any existing controversy to arbitration or a provision in a written agreement to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity relating to the validity, enforceability or revocation of any contract.	PA does not mandate reference of claims to arbitration, mediation or panels. Voluntary arbitration agreements permitted under arbitration act **42 §7303.**	**HB 167, 379.** To amend state Constitution to allow legislature to enact non-economic damage limits and to limit attorney fees. Introduced Feb. 2005. **HB 719** to establish mandatory pre-litigation screening in med-mal actions. Introduced Mar. 2005. **HB 736** To direct portion of non-economic and punitive damages into state fund.

RHODE ISLAND	No limits on damage awards. **§9-1-8** punitive damages prohibited in claims brought by estate, administrator or executor. **§9-19-34.1.** Collateral source rule requiring jury to reduce award for damages by sum equal to difference between total benefits received and total amount paid to secure benefits by plaintiff.	**§10-3-2.** When clearly written and expressed, a provision in a written contract to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two (2) or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**RI** does not mandate reference of claims to arbitration, mediation or panels. Permits voluntary arbitration agreements under arbitration act §10-3-2.	None.
SOUTH CAROLINA	**2005 SC Legis Act 32 approved 4/4/2005 , effective 7/1/05 and should be codified at §15-32-3 et seq.** Non-economic damages will be limited to $350,000 per claimant with aggregate total of $1,050,000. Indexed to CPI, and no limits for gross negligence or wanton or willful conduct. No cap on punitive damages. **§38-79-420** et seq. creates Patient Compensation Fund that pays judgment in excess of $200,000 per incident, $600,000 per year for participating providers.	**§15-48-10**. A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. **This chapter however shall not apply to** **1) A pre-agreement entered into when the relationship of the contracting parties is such that of lawyer-client or doctor-patient** **2)Any claim arising out of personal injury, based on contract or tort**	Currently not permitted under **§15-48-10** for pre-agreements for doctor-patient relationships nor for any claim arising out of personal injury. **§15-32-3** et seq. as approved will permit voluntary binding arbitration agreements and mandate participation in court sponsored mediation under the SC state court's ADR rules.	**2005 SB 577 --** introduced March 2005 and would create a South Carolina Medical Arbitration Act at §15-14 et seq. The bill would permit voluntary binding arbitration agreements currently prohibited under **§15-48-10**, require signs be posted notifying participation in SC Medical Arbitration Act, specific contract language and font sizes
SOUTH DAKOTA	**§21-3-11.** $500,000 limit on non-economic damages. No limit on special damages. **§21-3-2**. No cap on punitive damages, at the discretion of trier of fact.	**§21-25A-1** A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.	**§21-25-B.1.** Voluntary arbitration agreement permitted for current and future care provided parties can terminate application of the agreement to future care, but not prior care. **§21-25B-3** - Arbitration agreement must not be prerequisite to service and specifies particular language must be above signature.	**HB 1148** (Passed 2/22/05) Apology not admissible in subsequent proceedings.
TENNESSEE	None.	**§29-5-302** A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the revocation of any contract.	TN does not mandate reference of claims to arbitration, mediation or panels. Permits voluntary arbitration agreements under §29-5-302.	**SB 2178 HB 2122** -- introduced to limit non-economic damages to $250,000 and would limit contingent attorney's fees.

TEXAS	**§74.301.** Non-economic damages are limited to $250,000 per claimant limit against providers or a single institution. For claims against multiple institutions, $500,000 limit per claimant for non-economic damages. **§41.008** General punitive damages limited to greater of 2x economic damages + non-economic damages, not to exceed $750,000 or $200,000. but under **§74.303** – all med.-mal civil damages, including punitive damages, are limited to $500,000 per claimant.	**TX Civ. Prac. & Rem. §171.001 --** A written greement to arbitrate is valid and enforceable if the agreement is to arbitrate a controversy that exists at the time of the agreement or arises etween the parties after the date of the agreement. A party may revoke the agreement only on a ground that exists at law or in equity for the revocation of a contract.	**§74.351.** Expert reports to be submitted to defendant and defendant's attorney within 120 days of filing claim. **§74.451.** Healthcare provider arbitration agreements must meet font and language requirements. Required language is that the agreement is invalid unless signed by an attorney of the patient's choosing. Attorney signature requirement preempted by the FAA according to the TX Supreme Court. In re Nexion Health at Humble, Inc., --- S.W.3d ---, (2005 WL 1252271 May 27, 2005).	None.
UTAH	**§78-14-7.1.** $400,000 limit on non-economic damages for actions arising after July 1, 2002. Adjusted annually by Administrative Office of Courts. **§78-18-1** – punitive damages are permitted and not limited.	**§78-31a-107 --** An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.	**§78-14-8, 12.** Utah Health Care Malpractice Act requires non-binding pre-litigation panel review before filing suit but can be waived by written agreement of parties. **§78-14-16.** Upon written agreement by all parties, proceedings may be binding arbitration. **§78-14-17** – signing arbitration agreement can't be a condition of service, patient can revoke within 10 days of signing, written information on arbitration given to patient.	None.
VERMONT	No limits on damage awards.	**12 §5652 --** Unless otherwise provided in the agreement, a written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties creates a duty to arbitrate, and is valid, enforceable and irrevocable, except upon such grounds as exist for the revocation of a contract. Agreement must be prominently displayed within a document or a separate document to be valid.	**12 §7002.** Voluntary arbitration once an injury is discovered and prior to commencement of trial. Pre injury agreements to arbitrate are not permitted. Panel consists of judicial referee selected by court administrator, layman and member of same profession as defendant.	**2005 SB 149, HB 329** introduced March 2005 – would limit non-economic damages to $250,000, adjusted per CPI, expression of apology inadmissible as evidence and mandatory arbitration procedures. Referred to judiciary committee.

VIRGINIA	**§8.01-581.15.** $1.5 mm limit on recovery of damages. Increased by $50,000 each year from 2001 to 2006. Increased by $75,000 each year in 2007 and 2008. **§8.01-38.1** Punitive damages limited to $350,000.	**§801-581.01 --** A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract.	**§8.01-581.2 & 581.8.** Either party can request a review by a medical malpractice review panel. Findings admissible in court but not considered conclusive. **§8.01-581.12.** May voluntarily enter agreement to arbitrate that is binding on parties as long as patient can withdraw and decline to submit any claim after withdrawal to arbitration. (injury prior to withdrawal subject to binding arbitration agreement).	**HB 2658 SB 1173** enacted and signed—expression of sympathy not admissible as evidence of admission of liability. **SB 855** introduced Jan. 2005 would cap non-economic damages at $350,000. Referred to judiciary committee.
WASHINGTON	**Unconstitutional** **§4.56.250.** Judgment for non-economic damages cannot exceed factor of the average annual wage and life expectancy of injured. The Supreme Court of Washington has held this cap on non-economic damages unconstitutional. Sofie v. Fireboard Corp., 771 P.2d 711 (Wash. 1989)	**§7.- - New UAA enacted 5/2005 effective 1/2006 (2005 Wash. Legis. 433).** An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of contract. **[Repeals §7.04.010 et seq.** Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this chapter, any controversy which may be the subject of an action existing between them at the time of the agreement to submit, or they may include in a written agreement a provision to settle by arbitration any controversy thereafter arising between them out of or in relation to such agreement. Such agreement shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement.]	**§7.70.100.** Mandatory pre-trial mediation. Panel members shall have expertise related specialty or action in question, and be a member of state bar association for minimum of 5 years or is a retired judge.	**2005 WA SB 6087 & SB 6072 introduced March 2005** will limit arbitrator in voluntary binding arbitration to awarding no more than $1mm in total damages. if declared unconstitutional by the Washington Supreme Court, then ballot initiative to amend the Washington Constitution.
WEST VIRGINIA	**§55.7B.8.** $250,000 limit for non-economic damages. This limit is increased to $500,000 limit for severe injury or death. Beginning in 2004, these are to be adjusted with the CPI to adjust for inflation. Physicians must carry at least $1 million malpractice insurance to qualify for limits. No limit on punitive damages.	**§55-10-1 –** permits voluntary arbitration of pending claim and binding on parties once agreed to. To be replaced under **2005 HB 2258** which is pending before the legislature to enact the UAA which will state: An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.	**§55.7B.6.** Plaintiff must file notice with certificate of merit stating expert's familiarity with standards, qualifications, opinion of breach of standard of care. Certificates must be filed at least 30 days before filing action, and one certificate for each defendant named. Healthcare provider has option to require claimant to participate in pre-litigation mediation, but is not required to do so.	**HB 3174 (**passed May 2005) that expression of apology not admissible in malpractice action as admission of liability.

WISCONSIN	**§893.55(4)()d).** After 1995, $350,000 damage limit adjusted annually for inflation. **§895.04. wrongful death limits --** $500,000 damage limit for death of a minor, and $350,000 damage limit for death of an adult.	**788.01 --** A provision in any written contract to settle by arbitration a controversy thereafter arising out of the contract, or out of the refusal to perform the whole or any part of the contract, or an agreement in writing between 2 or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable and enforceable except upon such grounds as exist at law or in equity for the revocation of any contract.	**§655.42-4.** Mandatory pre-litigation mediation. Request must be made prior to court action. **§655.27 I**njured patients and families injury fund can pay damages in excess of caps.	None.
WYOMING	**Wyoming Constitution Section 10, Art. IV** prohibits any law that limits on damage awards for injury or death. 2004 ballot measure to permit legislature to institute non –economic damage limits rejected by voters.	**§1-36-103 --** A written agreement to submit any existing or future controversy to arbitration is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of the contract.	**All following enacted 3/15/05 effective 7/1/05** **§9-2-1517 -** creates Medical review panels. **§9-2-1518 -** Unless parties are subject to an arbitration agreement or all parties agree to waive, no lawsuit can be filed until the medical review panel has rendered their decision. **§9-2-1522 -** Panel decision is non-binding but admissible as evidence at trial.	None.