

LIFT THE CAP

**HOW FAIRLY
COMPENSATING
INJURED PATIENTS
WILL SAVE TAXPAYER
DOLLARS**

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INTRODUCTION

Medi-Cal has the right to be reimbursed for the cost of health care that a patient needs as a result of medical negligence. That reimbursement occurs after the successful resolution of a medical malpractice case. However, California's outdated cap on compensation for medical malpractice, set in 1975 and never adjusted for inflation, prevents many injured patients from bringing legitimate complaints to court. Because of the cap, most children, elderly, and low-income Californians cannot afford to bring medical malpractice cases. When there is no case filed, Medi-Cal is not reimbursed for the cost of caring for those injured by medical negligence.

A legislative compromise announced in April 2022 will scale up the cap in wrongful death cases to \$1 million and in personal injury cases to \$750,000, over ten years, and then increase annually for inflation. It will also allow survivors to sue both health care providers and institutions for up to three separate caps, depending on the circumstances. The new legislation, Assembly Bill 35, has passed the legislature and is headed to Governor Newsom for his signature. If signed, proponents of the Fairness for Injured Patients Act will withdraw it from the November 2022 California ballot. The ballot initiative, proposed by families harmed by medical malpractice, would have adjusted the \$250,000 cap for inflation and created an exception for cases of catastrophic injury or death.

Either plan will restore court access for injured patients and their families.

Updating the cap, through legislation or at the ballot, will increase court access and result in increased reimbursements to Medi-Cal. Opponents of the reform who argue that adjusting the cap will raise health care costs should consider not only the current costs of undeterred medical malpractice injuries, but also the savings that will result from these increased reimbursements.

This study investigates the amount in reimbursements Medi-Cal, California's Medicaid program, would collect for the costs of medical negligence if the state's cap on compensation were adjusted to allow more meritorious cases to move forward. Analysis of Medicaid data collected from 18 states suggests that, if California's cap were updated as proposed in the recent legislative deal, Medi-Cal could collect between \$6 million and \$17.7 million more annually in reimbursements for the cost of care provided to patients harmed by medical negligence.

METHODOLOGY

Consumer Watchdog requested Medicaid reimbursement data for 2015-2019 via public records requests to each state. These payments were made to state Medicaid programs via subrogation for medical malpractice judgments and settlements, on behalf of Medicaid beneficiaries. Subrogation is the process by which insurance plans, such as Medi-Cal, receive reimbursement from liable health care providers when a patient receives damages in a medical malpractice case. 18 states provided data in response to our request.

To estimate the Medi-Cal savings that would result from increased reimbursements under FIPA, the rate of reimbursement per Medicaid enrollee in each state was multiplied by California's Medi-Cal enrollment. This normalized the reimbursement rate of each state for the size of California's Medi-Cal enrollment, so that the rates could be compared with California's.

Medicaid enrollment data was taken from the Medicaid open data website, using enrollment data from September 2019.

FINDINGS

The data shows that Medicaid programs in states without a cap on compensation in medical negligence cases, and in states with exceptions to their cap, receive significantly higher reimbursements on average from medical malpractice judgments and settlements than do states with a cap. It also shows that Medicaid programs in states without a cap receive payments in a higher number of cases.

California currently receives an average \$11,401,476 annually in reimbursements.

Increased Medi-Cal Reimbursements

States without a cap receive approximately 1.53 times as much in reimbursements to Medicaid as California. This suggests that if California removed its cap, Medi-Cal could receive up to \$6,041,810 in additional payments annually.

When comparing California only to large states (with populations greater than 10 million) with similar costs of living, the additional reimbursement is even larger. States without a cap receive 2.55 times as much in reimbursements to Medicaid as California. This suggests that if California removed its cap, Medi-Cal could receive up to \$17,711,229 in additional payments annually.

Medi-Cal Reimbursed in More Cases

States without a cap receive payments in approximately 2.07 times as many cases as California. This suggests that if California removed its cap, Medi-Cal could receive payments for up to 308.3 cases per year, resulting in \$12,162,982 in additional payments to Medi-Cal annually.

The numbers are about the same when comparing California only to large states. States without a cap receive payments in approximately 2.05 times as many cases as California. This suggests

that if California removed its cap, Medi-Cal could receive payments for up to 304 additional cases per year, resulting in \$11,993,249 in additional payments to Medi-Cal annually.

Similar Reimbursement per Case Across States

Table 5 shows that average reimbursement per case of each category remains similar. This suggests that the absence of a cap does not significantly influence collection amounts, only reimbursement frequency.

Increased Reimbursements and Cases in Exception States

States with exceptions to their caps on damages also receive more in reimbursements to Medicaid than California and receive payments in more cases. These states' exceptions are similar to those proposed in the Fairness for Injured Patients Act, which creates an exception to the cap in instances of wrongful death and catastrophic injury.

DATA

States with a cap on damages are categorized in this study as "Cap States." States with exceptions to their cap, such as an exception for cases of catastrophic injury, are categorized as "Exception States." Indiana is included in this category because of its unusual limitation on total damages. States with no cap on damages are categorized as "No Cap States."

Reimbursement Amounts

"Average Annual Reimbursement" in the table below refers to average reported annual payment collection in each state over five years, 2015 - 2019.

We adjusted each state's numbers to reflect what they would be if Medicaid enrollment matched California's. "Reimbursement Adjusted for Medi-Cal Enrollment" conveys, for example, the size of Colorado's payment collection if Colorado's Medicaid enrollment was equal to California's Medi-Cal enrollment.

**Graph 1: Average Annual Reimbursement Collected 2015-2019,
Adjusted for Medi-Cal Enrollment**

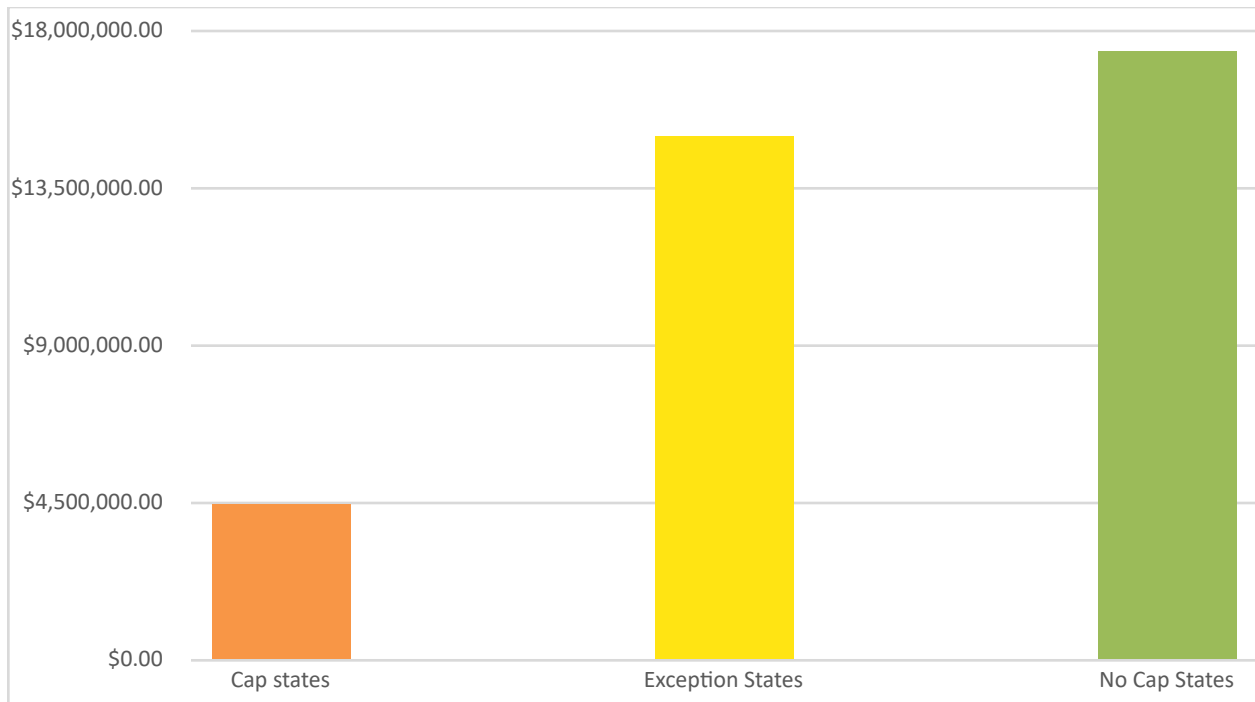


Table 1: Average Annual Reimbursement Collected 2015-2019

	Average Annual Reimbursement	Reimbursement Adjusted for Medi-Cal Enrollment	Cap
CAP STATES			
California	\$11,401,476.59	\$11,401,476.59	\$250,000
Colorado	\$347,383.16	\$3,525,981.21	\$300,000
Oregon	\$254,429.30	\$3,305,064.76	\$500,000
Nevada	\$266,012.25	\$5,646,540.05	\$350,000
Texas	\$697,858.98	\$2,090,331.10	\$250,000
Wisconsin	\$83,396.94	\$876,194.80	\$750,000
Cap States Average	\$2,175,092.87	\$4,474,264.75	
EXCEPTION STATES			
Indiana	\$268,839.67	\$2,548,881.21	Total cap of \$1,800,000
Maryland	\$2,746,595.20	\$27,634,100.09	\$845,000; \$1.06 million for wrongful death when there are two or more beneficiaries
Massachusetts	\$2,657,193.59	\$19,340,939.04	\$500,000; unlimited for permanent injury
Michigan	\$2,328,770.57	\$12,214,686.54	\$465,900; \$832,000 for paralysis, impaired cognitive capacity, damage to a reproductive organ
South Carolina	\$447,409.47	\$4,317,586.62	\$350,000; \$1.05 million when there is more than one defendant
West Virginia	\$1,000,392.86	\$23,983,819.05	\$250,000 cap; \$500,000 for permanent injury or death
Exception States Average	\$1,574,866.89	\$15,006,668.76	
NO CAP STATES			
Illinois	\$3,832,126.56	\$17,875,577.69	
Kansas	\$165,977.89	\$12,476,326.00	
New York	\$14,372,732.05	\$29,448,092.90	
Pennsylvania	\$9,085,392.96	\$40,014,446.70	
Washington	\$396,221.64	\$1,924,077.67	
Wyoming	\$12,672.58	\$2,921,202.97	
No Cap States Average	\$4,644,187.28	\$17,443,287.32	

Graph 2: Average Annual Reimbursement Collected in States with Population >10 Million, Adjusted for Medi-Cal Enrollment



Table 2: Average Annual Reimbursement Collected in States with Population >10 Million

	Average Annual Reimbursement	Reimbursement Adjusted for Medi-Cal Enrollment	Cap
CAP STATES			
California	\$11,401,476.59	\$11,401,476.59	\$250,000
Texas	\$697,858.98	\$2,090,331.10	\$250,000
Cap States Average	\$6,049,667.78	\$6,745,903.85	
EXCEPTION STATES			
Michigan	\$2,328,770.57	\$12,214,686.54	\$465,900; \$832,000 for paralysis, impaired cognitive capacity, damage to a reproductive organ
Exception States Average	\$2,328,770.57	\$12,214,686.54	
NO CAP STATES			
Illinois	\$3,832,126.56	\$17,875,577.69	
New York	\$14,372,732.05	\$29,448,092.90	
Pennsylvania	\$9,085,392.96	\$40,014,446.70	
No Cap States Average	\$9,096,750.52	\$29,112,705.76	

“Each year that passes without updating the cap, California patients are losing out on more resources that should be directed toward their health care – currently between \$6 million and \$17 million.”

Number of Cases

“Average Annual Cases” in the table below refers to average reported annual number of cases that resulted in payment in each state during the years 2015-2019.

“Cases Adjusted for Medi-Cal Enrollment” similarly refers to the payment collected in each state when adjusted to California’s Medi-Cal enrollment. It conveys, for example, the number of cases for which payment was made in Colorado if Colorado’s Medicaid enrollment was equal to California’s Medi-Cal enrollment.

Graph 3: Average Number of Cases Reimbursed Annually, Adjusted for Medi-Cal Enrollment

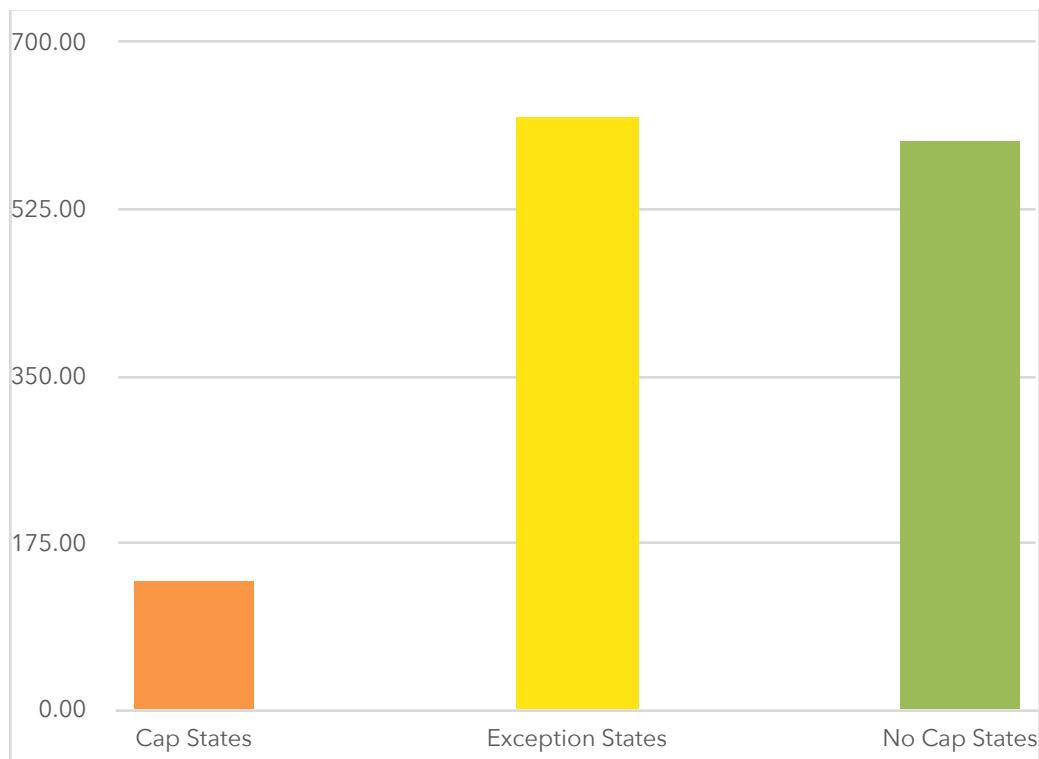
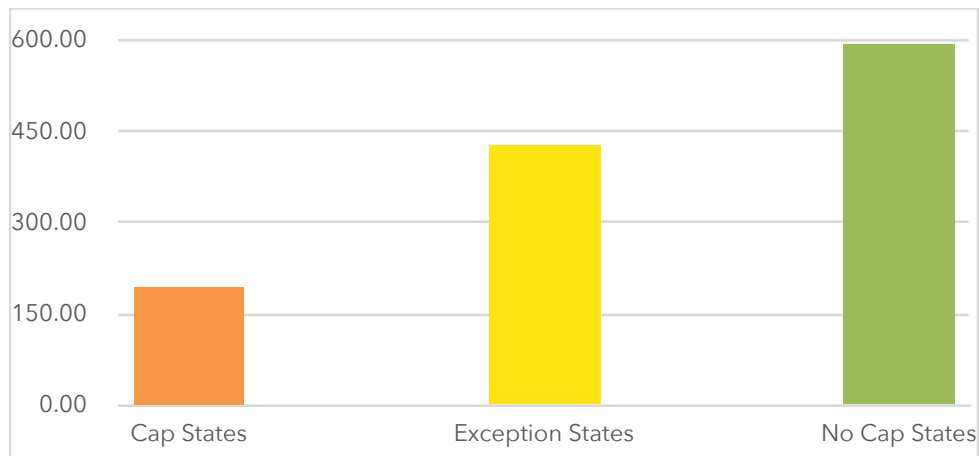


Table 3: Average Number of Cases Reimbursed Annually

	Average Annual Cases	Cases Adjusted for Medi-Cal Enrollment
CAP STATES		
California	289.0	289.0
Colorado	11.2	113.7
Oregon	7.8	101.3
Nevada	5.8	122.1
Texas	32.6	97.6
Wisconsin	8.8	92.5
Cap States Average	59.2	136.0
EXCEPTION STATES		
Indiana	12.8	121.4
Maryland	156.8	1577.6
Massachusetts	58.4	425.1
Michigan	81.2	425.9
South Carolina	33.0	318.5
West Virginia	36.0	863.1
Exception States Average	63.0	621.9
NO CAP STATES		
Illinois	83.6	390.0
Kansas	8.3	290.0
New York	315.7	647.0
Pennsylvania	168.4	741.7
Washington	27.2	132.1
Wyoming	6.0	1383.1
No Cap States Average	101.5	597.3

Graph 4 : Average Number of Cases Reimbursed Annually in States with Population >10 Million, Adjusted for Medi-Cal Enrollment



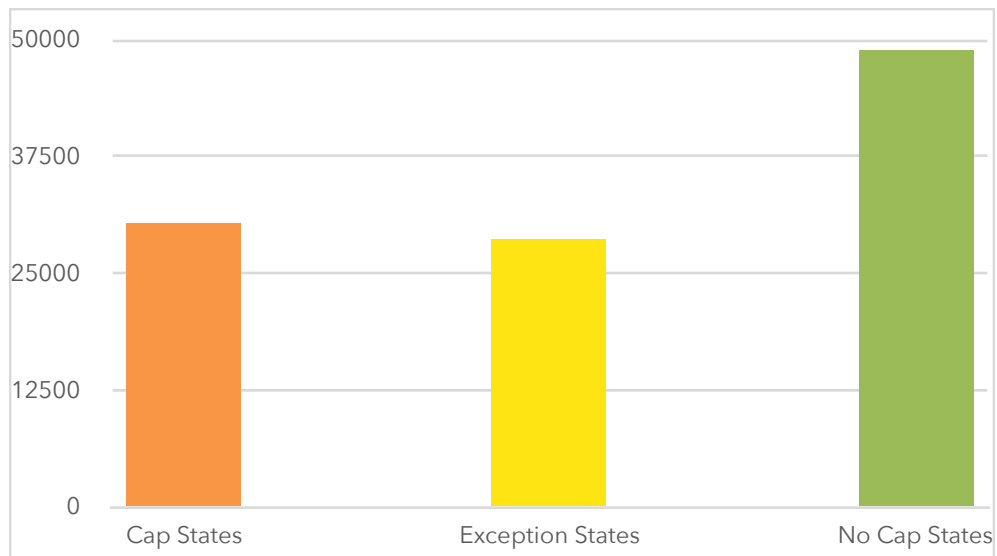
**Table 4: Average Number of Cases Reimbursed Annually
in States with Population >10 Million**

	Average Annual Cases	Cases Adjusted for Medi-Cal Enrollment
CAP STATES		
California	289.0	289
Texas	32.6	98
Cap States Average	160.8	193.50
EXCEPTION STATES		
Michigan	81.2	426
Exception States Average	81.2	426.00
NO CAP STATES		
Illinois	83.6	390
New York	315.7	647
Pennsylvania	168.4	742
No Cap States Average	189.2	593.0

Reimbursement Per Case

“Average Reimbursement per Case” in the table below refers to the average annual reimbursement per average annual number of cases in each state.

**Table 5: Average Reimbursement per Case
in States with Population >10 Million**



CONCLUSION

Analysis of reimbursements to Medicaid for medical malpractice shows that updating California's outdated cap, as proposed in the recent legislative compromise, will result in significant Medi-Cal savings. Reimbursement size and frequency are both increased in states with no cap and in states with exceptions to their cap. This is especially true in states with population sizes comparable to California's.

It is worth noting that the average reimbursement amount per case remains similar across all states. This indicates that updating the cap will not significantly influence judgment and settlement amounts, it will only make fair compensation more accessible.

As the cap's value continues to diminish due to inflation, the amount of missed Medi-Cal savings will only grow. Each year that passes without updating the cap, California patients are losing out on more resources that should be directed toward their health care – currently between \$6 million and \$17.7 million annually. When the reform deal is signed into law, injured patients and families will be eligible for fair compensation for the first time in nearly fifty years, and Medi-Cal will receive greater reimbursements in order to better serve patients across the state.