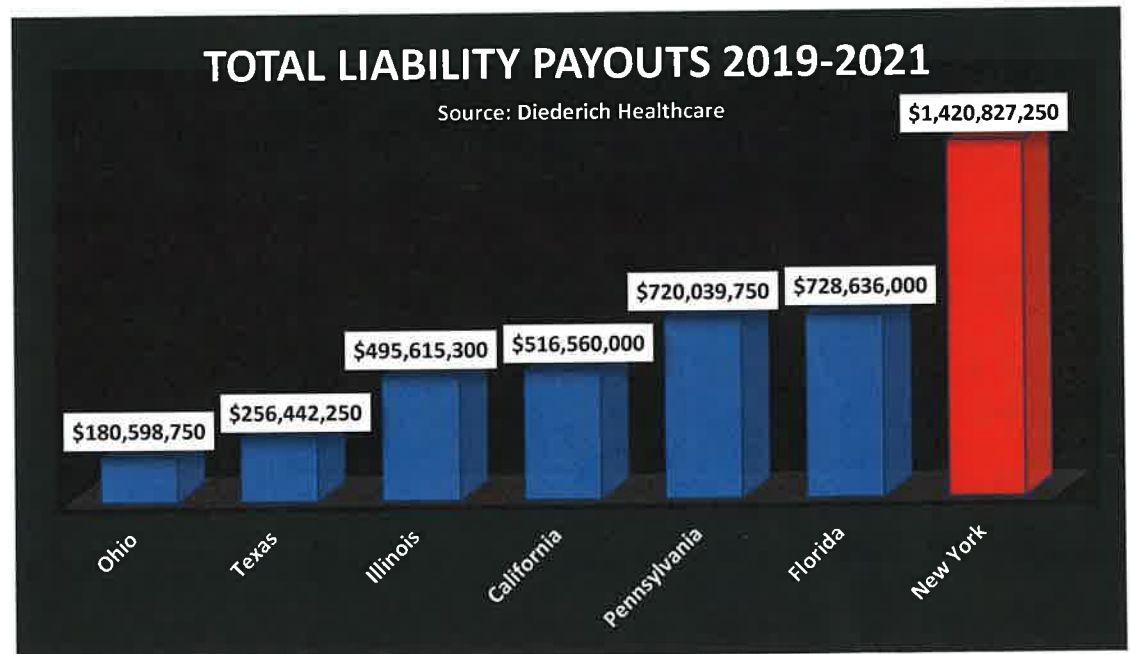
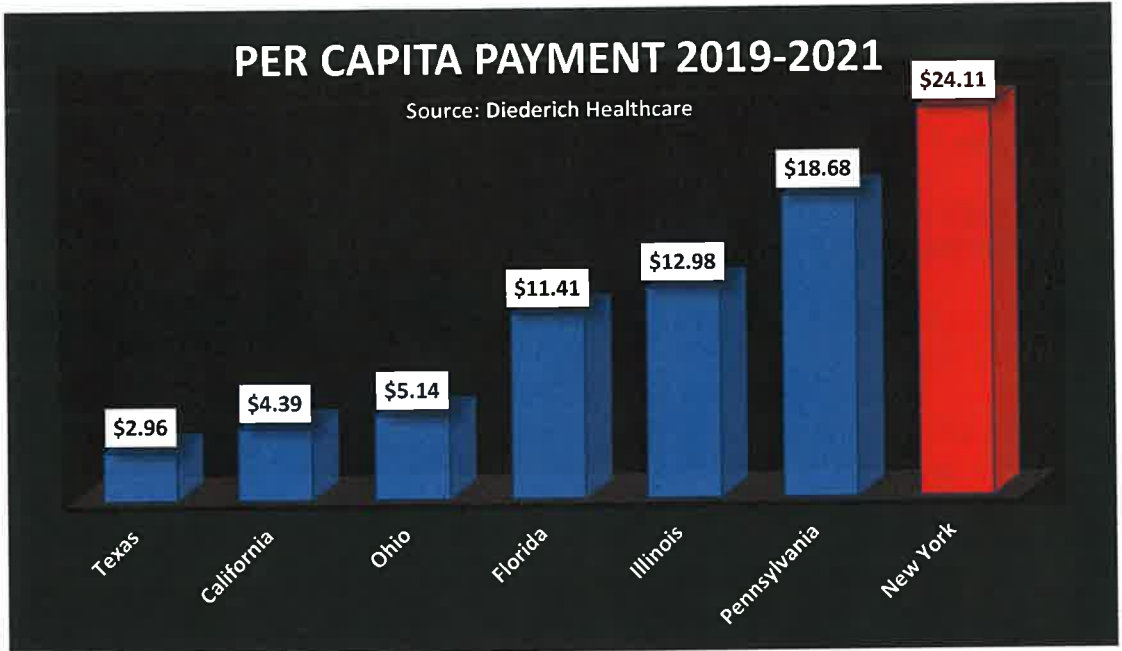


CONTAINING EXORBITANT MEDICAL LIABILITY COSTS

Physician practices are still recovering from the financial strain of the pandemic. This strain heightens the need to contain New York's notoriously excessive liability costs. Unfortunately, New York's physicians and hospitals continue to incur the highest liability awards and costs in the nation, far surpassing more populous states such as California and Texas. Medical liability costs hurt consumer affordability and access, as these costs contribute to New York's high premium costs, which also limit small business growth. Moreover, excessive liability costs disproportionately impact physicians working in underserved communities who have experienced heightened financial strain from the pandemic. For these reasons, New York is regularly ranked [worst among states in the country for physicians to practice medicine](#).



If that were not bad enough, this past year the New York State Legislature passed a bill (A.6770/S.74-A) that could significantly increase New York physicians' already

astronomical medical liability premiums by expanding the types of damages awardable in a wrongful death action. One actuarial study concluded that it would require premium increases of nearly 40%.

MSSNY has argued that legislation to expand liability should only be considered in the context of a comprehensive effort to address New York's excessive liability costs. While many other states have passed laws to contain medical liability payouts and provide greater fairness in medical liability litigation, New York has not, which is why our medical liability insurance and payout costs far exceed every other state in the country.

MSSNY Supports legislative initiatives to reduce malpractice costs and non-meritorious claims, including many that have proven successful in dozens of other states, such as:

- **Certificates of Merit.** Expanding New York's existing flimsy Certificate of Merit requirement to require that a more detailed justification be provided for filing a medical malpractice lawsuit. This is particularly important given that roughly 2/3 of all

medical liability actions result in no payment to the plaintiff, yet tens of millions of dollars are spent on defense costs, each year, for these non-meritorious claims.

- **Expert Witnesses.** Requiring that an expert witness in a medical malpractice action practice in the same specialty as the defendant physician.
- **Apologies.** Ensuring statements of apology from a physician to a patient are not 'discoverable' in future litigation.
- **Reasonable Damages.** Placing reasonable limits on non-economic damages, as have over 30 other states across the country including California and Texas.
- **Alternative Resolution.** Creating alternative systems for resolving liability claims such as medical courts or a Neurologically Impaired Infants Fund.
- **Protecting Excess Malpractice Coverage.** Continuing an adequately funded Excess Medical Malpractice Insurance Program without imposing cost-sharing requirements on physicians receiving this essential coverage.

MSSNY Opposes various stand-alone measures that could further increase malpractice insurance costs, such as:

- **Anti-Consumer Attorney Fee Increases.** Oppose the elimination of statutory consumer protections against exorbitant attorney contingency fees.
- **Pre-Judgment Interest.** Permitting the awarding of interest from the date of the lawsuit, rather than the court decision or date of settlement. NY's judgment interest rate is 9%, far above usual interest rates.
- **Pre-Trial Cost-Sharing.** Oppose proposals to force litigants in multi-defendant actions to make decisions before trial regarding post-verdict cost-sharing.
- **Reducing Defense Rights.** Oppose the elimination of important defense rights that would limit the ability of a defendant physician's counsel to question plaintiff's treating provider.

Protecting Care Improvement Efforts through Peer Review. MSSNY continues to support efforts to enhance healthcare quality improvement by encouraging open dialogue in hospital peer review proceedings without fear that such statements may be used against them in litigation. An absurd exception to New York's peer review confidentiality law permits the discovery by trial lawyers of statements made by a physician during peer review who subsequently is sued. This naturally discourages the full and frank discussion of efforts to improve care delivery. This long-standing problem was further exacerbated by a recent 2nd Department judicial decision (*Siegel v. Snyder*) that further limited the confidentiality of all peer review discussions where the identity of the speaker cannot be discerned. Because New York's excessive liability environment discourages open communication of healthcare delivery, confidentiality of efforts to learn from adverse events in care delivery is essential. To address this problem, MSSNY supports legislation to ensure that peer review discussions can be robust without fear of litigation by ensuring its confidentiality.

PRESERVING AND ENHANCING PHYSICIAN-LED TEAM-BASED CARE

To ensure patients receive the highest quality care, MSSNY supports efforts to preserve the physician-led care model in healthcare settings across the state. Our patients are best served by the combined care of a team, led by a physician whose education and training enables them to oversee the care to ensure optimal medical treatment for the patient. Maintaining and promoting physician-led healthcare is not only critical for the health and well-being of patients, but also what they want. A recent national [survey](#) reported that 95% of patients believe it is important that a physician be involved with their diagnosis and treatment decisions.