FLORIDA MEDICAL RIGHTS ASSOCIATION

Florida's "Free Kill" Law
The §768.21(8) Wrongful Death Malpractice Loophole

What Florida's Experience Shows About Malpractice Insurance Costs, Physician Supply, and Large Verdicts

Florida Statute §768.21(8), often referred to as the "Free Kill" law, denies families noneconomic wrongful-death damages when a medical negligence victim is unmarried and has no children under age 25. Because litigation costs in these cases exceed potential recovery, nearly all such cases are financially impossible to pursue. The law therefore acts as a barrier to the courts, shielding negligent medical providers from civil accountability, undermining patient safety, and preventing Medicare, Medicaid, and private insurers from recovering costs associated with fatal medical negligence.

Healthcare and insurance industry lobbyists claim that repealing this loophole without restoring statewide caps on noneconomic damages in all medical malpractice cases would increase malpractice insurance costs, drive physicians from Florida, and fuel excessive jury verdicts. Florida's experience since the state Supreme Court struck down these caps as unconstitutional directly contradicts industry claims that these limits are necessary to control insurance costs and preserve access to quality healthcare.

AFTER THE FLORIDA SUPREME COURT OVERTURNED MALPRACTICE CAPS:

01 | MALPRACTICE INSURANCE

PREMIUMS DECLINED

Florida's inflation-adjusted premiums have fallen to some of their lowest levels since 2000 — and below 1990 levels. Inflation-adjusted malpractice payouts per physician have fallen to less than one-third of their 1990s average.

TAKEAWAY Noneconomic damage caps are not necessary to control malpractice insurance costs.

02 | PHYSICIAN SUPPLY & RETENTION

PHYSICIAN GROWTH OUTPACED POPULATION GROWTH

Over the decade covered by a 2022 DOH report, Florida's direct-care physician supply increased 33.8%, compared with 13.4% population growth. Physicians planning to leave Florida over malpractice costs and liability concerns fell from 17.9% in 2011 to just 3.21% in 2025 — a historic low.

TAKEAWAY Noneconomic damage caps are not necessary to maintain and grow the physician workforce.

03 | LARGE MALPRACTICE VERDICTS

70% INVOLVE LIVING PATIENTS — NOT WRONGFUL DEATH

Of the 34 Florida malpractice verdicts exceeding $10 million between 2014 and 2025, only 10 (30%) involved wrongful death. Of these large verdicts tracked since 2014, at least half were settled, overturned, vacated, or reduced.

TAKEAWAY Large malpractice verdicts predominantly involve living patients, not wrongful-death claims.

WHAT REPEAL WOULD CHANGE — AND WHAT WOULD REMAIN

Florida is the only state with this wrongful-death exclusion, and no other wrongful death cases in Florida are subject to damage caps. A clean repeal without caps would restore equal rights and access to the courts for families who lose loved ones to medical malpractice. Repeal would apply prospectively, limiting new claims, while preserving Florida's existing safeguards against frivolous malpractice lawsuits — including mandatory pre-suit investigation, expert review, and sworn medical opinion.

KEY POLICY CONCLUSION

Repeal of §768.21(8) and malpractice noneconomic damage caps are — and should remain — two distinct policy issues.

When Florida previously adopted malpractice damage caps, lawmakers relied on formal Governor's task force reviews of insurance costs, physician supply, and litigation. The Florida Supreme Court later struck down these caps as unconstitutional, finding no meaningful connection between damage caps and malpractice premiums or physician supply.

Today, industry representatives seek to reinstate these same caps through legislation repealing §768.21(8), without a current independent assessment demonstrating that caps are necessary or effective in improving healthcare access. FMRA's analysis of Florida's experience since the caps were struck down finds no evidence-based justification for restoring unconstitutional malpractice damage caps. Florida can end the unequal treatment imposed by §768.21(8) without caps and without jeopardizing affordable malpractice insurance, physician workforce stability, and access to quality healthcare.

THE FULL FMRA ANALYSIS TESTS 10 COMMON INDUSTRY CLAIMS

INSURANCE & WORKFORCE Premium increases • Physician workforce • OB access • Healthcare costs • Large verdicts

LITIGATION & ACCOUNTABILITY Lawsuit volume • Frivolous claims • Economic damages • Administrative discipline • Relative eligibility

FULL POLICY PAPER + METHODS + SOURCES
floridamedicalrights.org/policy-paper | Updated October 2026

SCAN FOR FULL ANALYSIS

Source: FMRA Policy Paper; underlying sources include Medical Liability Monitor, Florida DOH, NPDB, FJRI, Florida statutes and court decisions.