

Codebook

I. General

A. Effective dates: In the data set, the law is coded as if it changes from one month to the next. However, the laws actually take effect on certain dates. If the effective date was on or before the 15th of that particular month, the new law is reflected in the data for that month. If the effective date was after the 15th, the old law is reflected in the data for that month.

II. Noneconomic Damages

A. Variables

1. necap: This represents the state law capping the amount of noneconomic damages that can be awarded.

B. Coding: The number represents the dollar amount that is the maximum award of noneconomic damages in the state.

C. State Variations

1. Alabama: necap = \$400,000 from June 1987 through September 1991. The statute effective June 11, 1987 and ruled unconstitutional on September 27, 1991 capped NED “including PD” (in effect, the sum of NED and PD) at \$400,000 in medical malpractice actions for personal injury (there is a different cap on total damages that applies in medical malpractice actions for wrongful death).

Nonetheless this cap is entered as a cap on NED, rather than a cap on total damages except for economic damages, in the dataset.

2. Alaska:

a) necap = \$500,000 from June 1986 through July 1997. The June 11, 1986 statute (revised effective August 1997) limited the award of noneconomic damages to \$500,000 except in cases of severe physical impairment or disfigurement, in which the limit does not apply. However, we have entered a cap of \$500,000 in our dataset when this statute is in effect. Health care providers should be aware of the cap's existence and should perceive it as decreasing liability pressure. Even though there are injuries to which the cap does not apply, there are no cases reported in Westlaw when this statute is in effect in which an exception to the cap is granted in a medical malpractice case, concerning childbirth or otherwise.

b) necap = \$1,000,000 from August 1997 through December 2005. For the 1997 amendment, the statute dictates that the award of NED be limited to the greater of \$400,000 or the injured person's life expectancy in years multiplied by \$8,000, unless the plaintiff "suffers severe permanent physical impairment or severe disfigurement," in which case noneconomic damages are limited to the greater of \$1,000,000 or the injured person's life expectancy multiplied by \$25,000. We have entered \$1 million in the dataset when this statute is in effect. This is the highest amount a health care provider can be held liable for (unless an injured newborn is projected to live past 40), the presence of the cap decreases liability pressure, and therefore it is reasonable to enter \$1 million in the data.

3. Hawaii: necap = \$375,000 from August 1986 through December 2005.

However, the \$375,000 cap only applies to physical pain and suffering and not the

other types of noneconomic damages (“mental anguish, disfigurement, loss of enjoyment of life, loss of consortium, and all other nonpecuniary losses or claims”).

4. Louisiana: necap = \$500,000 from January 1985 through December 2005. A 1975 statute purports to limit total damages in medical liability cases to \$500,000, excluding compensation for expenses on future medical care needed as a result of the iatrogenic injury. As awards of punitive damages are not permitted in Louisiana, and an exception to this cap is made for a major type of economic damages, this cap effectively functions as a cap on NED, and is entered as a NED cap rather than a total damages cap in the data.

5. Maine: necap = no cap from May 2000 through December 2005. A statute effective April 27, 2000 limited NED in actions against “health plan carriers” to \$400,000. In Maine, a “health plan carrier” is a health insurance company, HMO, or a nonprofit hospital. Since doctors are not health plan carriers and, as such, NED in medical malpractice suits against doctors are not capped, no cap is entered into the dataset when this statute is in effect.

6. Massachusetts. necap = no cap from November 1986 through December 2005.

The reform of November 1, 1986 puts a cap of \$500,000 on damages for pain and suffering, loss of companionship, embarrassment, and other items of general damages, unless it determines that there is "a substantial or permanent loss or impairment of a bodily function or substantial disfigurement, or other special circumstances in the case which warrant a finding that imposition of such a

limitation would deprive the plaintiff of just compensation for the injuries sustained." Given the important cases in which this cap does not apply, it is not entered in the dataset. Massachusetts is coded as having no cap on NED.

Regarding this NED cap in Massachusetts, the law firm of McCullough, Campbell and Lane states in its Summary of Medical Malpractice Law that "Since this standard can often be met, the cap should not be relied on."

(<http://www.mcandl.com/massachusetts.html#VII>, accessed May 25, 2006).

7. Minnesota: necap = no cap from August 1986 through April 1990. The 1986 reform (repealed in 1990) put a cap of \$400,000 on damages for loss of consortium, emotional distress, or embarrassment. The reform does not limit the award of other noneconomic damages such as awards for pain, disability or disfigurement. As such, the cap has not been entered into the dataset. There are no cases published in Westlaw that apply this cap to limit awards for NED for acts of medical malpractice, related to childbirths or otherwise, that occurred in Minnesota when this cap is in effect.

8. New Mexico. necap = \$500,000 before April 1995 and \$600,000 beginning in April 1995. In 1976 the New Mexico legislature limited the aggregate amount recoverable due to an act of medical malpractice to \$500,000, but made exceptions to the cap for punitive damages and for expenses for medical care that is needed as a result of the act of malpractice. Thus, the cap effectively functions as a cap on NED, given the exceptions made to it for punitive and economic damages. This cap was raised to \$600,000 on April 1, 1995. Although the statute also limits each health care provider's personal liability to \$100,000 for

“monetary damages and medical care and related benefits” before July 1992 and \$200,000 afterwards (the amount of the award in excess of this limit is paid for from New Mexico’s patient compensation fund), \$500,000 and \$600,000 have been entered into the data in the relevant time spans, as patients’ incentives to file medical malpractice suits are driven by these higher caps that determine the amount of compensation a plaintiff can receive in such a suit, not the lower limits on physicians’ and hospitals’ personal liability. New Mexico courts have awarded damages for medical malpractice in excess of the lower limits on health care providers’ personal liability. See *Haceesa v. U.S.*, 2002, 309 F.3d 722.

9. Ohio: necap = \$1 million from February 1997 through February 1998. The 1997 statute, ruled unconstitutional on February 25, 1998, limits the award of noneconomic damages to the greater of \$250,000 or three times economic damages to a maximum of \$500,000, unless there is a finding that a plaintiff suffered (1) a permanent and severe physical deformity (2) a permanent physical functional injury that permanently prevents her from being able to independently care for herself and perform life sustaining activities. In those two cases, noneconomic damages are limited to the greater of \$1 million or \$35,000 times the number of years remaining in the plaintiff’s expected life. It is possible for acts of medical malpractice in childbirths to result in permanent, severe deformities and functional injuries. We have entered \$1 million in the data, even though it is possible for a newborn with a life expectancy of 29 years or more to recover more than \$1 million for NED under this statute.

10. Oklahoma:

- a. necap = \$300,000 from July 2003 through December 2005. The statute (in both the July 2003 and the November 2004 amendments) provides for the cap to be lifted when the defendant is found to have committed negligence by clear and convincing evidence rather than a preponderance of evidence, but since the statute still induces a decrease in liability pressure in Oklahoma, the cap is entered in the data.
- b. The 2003 amendment only applies to cases involving pregnancy (labor, delivery, and post partum period) as well as emergency care. The 2004 amendment applies to all noneconomic damages in medical liability cases, *provided* the defendant made an offer of judgment and the amount of the verdict is less than one-and-a-half times the amount of the final offer judgment.

11. Texas: necap = \$500,000 (adjusted for inflation since September 1977) from January 1985 through April 1988, and necap = no cap from May 1988 through August 2003. In September 1977, the Texas legislature imposed a cap of \$500,000 on total damages, except for economic damages awarded for medical expenses, in medical malpractice suits. As an exception is made for a type of economic damages, this cap is coded as a cap on NED rather than a total damages cap. The cap was found to be unconstitutional by the Supreme Court of Texas in May 1988 in a personal injury medical malpractice case. However, on December 19, 1990 the Supreme Court of Texas ruled that the cap is constitutional and can be applied in medical malpractice actions for wrongful death, although it still

cannot be applied in actions for nonfatal personal injury. Even after the December 1990 court decision, no cap is entered in our data as the cap only applies in wrongful death suits. In September 2003, a new statute takes effect, capping NED in all medical malpractice suits, over deaths or nonfatal injuries, at a lower level.

III. Punitive Damages

A. Variables: There are two predominant rules used by states to cap punitive damages. Some states cap punitive damages at a certain dollar amount while others place a cap on punitive damages as a function of the amount of economic and noneconomic damages awarded. Other states have both and use the greater or lesser of the two rules as the maximum.

1. `pdcapd`: This represents the state law capping the total dollar amount of punitive damages that can be awarded.
2. `pdcapm`: This represents the state law capping the amount of punitive damages as some multiplier of economic and noneconomic damages.
3. `pdcapdm`: This indicates whether the lesser or the greater of the total dollar amount or some multiplier of economic and noneconomic damages was used.

B. Coding

1. `pdcapd`: The number represents the dollar amount that is the maximum award of punitive damages in the state.
2. `pdcapm`: The number here represents the multiplier that is used to arrive at the maximum amount that can be awarded in punitive damages (e.g., 3 represents

that the maximum amount of punitive damages that can be awarded is 3 times the amount of economic and noneconomic damages that can be awarded).

3. *pdcapdm*: In this column, 1 means that the greater of *pdcapm* and *pdcapd* was used as the punitive damages cap. 0 means that the lesser of those two was used.

C. State Variations

1. Kansas. *pdcapd* = \$105,500, with adjustments for inflation after the cap begins, from July 1987 through December 2005. The statute effective July 1st 1987 limited the amount of punitive damages to the lesser of defendant's highest annual gross income during the preceding five years or \$5 million. The July 1st 1988 law change allows the judge, in some instances, to use 50% of the defendant's net assets instead of annual income. The mean annual income for obstetricians in Kansas in May 2005 was \$180,360 (according to the Bureau of Labor Statistics). This deflates to approximately \$105,000 (specifically, \$105,581) in May 1987. The BLS only reports estimates for annual income for obstetricians in 2005, it does not report it for any years before then. As \$105,000 is much less than \$5 million, this value is entered in the data.

2. Maine: no cap on *pd* from May 2000 through December 2005. A statute effective April 27, 2000 limited PD in actions against “health plan carriers” to \$400,000. In Maine, a “health plan carrier” is a health insurance company, HMO, or a nonprofit hospital. Since doctors are not health plan carriers and, as such, PD in medical malpractice suits against doctors are not capped, no cap is entered into the dataset when this statute is in effect.

3. Mississippi: $pdcapd = pdcapm = 0$ from January 2003 through December 2005. The 2003 and 2004 punitive damage cap statutes have cap levels that vary with the defendant's net worth. For defendants with net worth less than \$50 million, the 2003 reform limits PD to 4% of the defendant's net worth, the 2004 reform, 2%. This cap is entered as a cap of 0 in the dataset, given that doctors have net worths far lower than \$50 million, and PD is capped at a small percentage of their net worth.
4. Montana: $pdcapd = pdcapm = 0$ from October 2003 through December 2005. The statute in Montana, effective October 1, 2003, is that PD are limited to the lesser of \$10M or 3% of a defendant's net worth. This cap is entered as a cap of 0 in the dataset, given that doctors have net worths that are much lower than \$10 million, and 3% is a small fraction of their net worth.
5. Oklahoma. $pdcapd = \$100,000$, $pdcapm = 1$, $pdcapdm = 1$ from September 1995 through December 2005. The statute capping punitive damages, effective August 25, 1995, states that when the jury finds by "clear and convincing" evidence that the defendant acted in "reckless disregard for the rights of others," the award is limited to the greater of \$100,000 or actual damages awarded; higher limits are in place when the defendant is found to have acted intentionally and with malice. As physicians are much more likely to be found to have acted with reckless disregard for the rights of others than to have acted intentionally and with malice, the lower cap is entered in the data.

IV. Total Damages

A. Variables

1. dcap: This represents the state law capping the total amount of damages that can be awarded in a medical malpractice suit.
2. dcapex: This represents whether a limit is placed on the sum of noneconomic and punitive damages only or on the sum of economic, noneconomic, and punitive damages.

B. Coding: The number in dcap represents the dollar amount that is the maximum award of total damages permitted in the state. dcapex is a dummy variable equal to 1 if the state law makes an exception to the "dcap" when economic damages are in excess of the cap and permits award levels in excess of the cap in that case; it is equal to 0 if no exception is made.

C. State Variations

1. Alabama: dcap = no cap from June 1987 through September 1995. This cap on total damages, enacted in June 1987 and ruled unconstitutional in September 1995, only applied in medical malpractice claims for wrongful death. As such the cap is not entered in the data.

V. Joint and Several Liability

A. Variables: Many states have different laws of joint and several liability for economic damages and noneconomic damages. This necessitates creating two variables for the joint and several liability laws.

1. jsled: This represents the state law for joint and several liability for economic damages.

2. jslned: This represents the state law for joint and several liability for noneconomic damages.

B. Coding: 0 (zero) represents that the state follows the common law and holds all defendants found to have fault jointly and severally liable. 1 (one) represents that the state has abolished the rule of joint and several liability and assigns damages to defendants individually in proportion to their fault. Other numbers are decimals that represent the proportion of fault a defendant must have in order to hold that defendant jointly and severally liable (e.g., 0.5 means that a defendant must be found at least 50% at fault to be held jointly and severally liable).

C. Assumptions: Some states have reforms to joint and several liability that are only applied if the plaintiff is found to be partially at fault for causing his or her own injury, while other states have reforms that have different rules that apply when a plaintiff is found to have fault. The nature of the tort of medical malpractice, particularly in obstetrics-related cases, makes it unlikely to find plaintiff fault. Therefore, it is assumed that the plaintiff is never found at fault in medical malpractice cases. See below for a more detailed description of states to which this assumption is applied.

D. State Variations: Some states have taken a more complex approach to their modifications of the joint and several liability rule. These approaches are described below.

1. Arkansas: $jsled = jslned = 1$ from April 2003 through December 2005. The March 25, 2003 law change applies only to personal injury, medical injury, property damage, and wrongful death cases and states that:

Defendants who are 1-10% at fault are liable for only their percentage of damages. Those who are 11-50% at fault may have their liability increased by up to 10%. Those who are 51-99% at fault may have their liability increased by up to 20%. This law does not apply to punitive damages (defendants are liable for only their own proportional share of punitive damages).

The change is coded as 1 (one), a complete repeal of joint and several liability.

2. Connecticut. $jsled = jslned = 1$ from October 1986 through September 1987, $jsled = 0$ and $jslned = 1$ from October 1987 through December 2005. The 1986 law barred application of the rule of joint and several liability in the recovery of all damages except where the liable party's share of the judgment is uncollectible because a liable party has gone bankrupt. This law is coded as a one (complete repeal of JSL) in the data. Doctors and hospitals carry high levels of liability insurance and are unlikely to be unable to pay the full amount of tort awards. The 1987 legislation limited application of this reform to noneconomic damages, but still kept the provision about bankrupt liable parties.

3. Florida

a) $jsled=0, jslned=1$ from July 1986 through September 1999. The 1986 law change bars joint and several liability for economic damages only

when the defendant has less fault than the plaintiff. The law is coded as 0 (zero) because of the assumption of no plaintiff fault.

b) jsled= jslned = 1 from October 1999 through December 2004. The 1999 law change amended Fla. Stat. Ann. § 768.81 governing comparative fault. The statute reads in relevant part:

(3) Apportionment of damages.-- In cases to which this section applies, the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability, except as provided in paragraphs (a), (b), and (c):

(a) Where a plaintiff is found to be at fault, the following shall apply:

1. Any defendant found 10 percent or less at fault shall not be subject to joint and several liability.
2. For any defendant found more than 10 percent but less than 25 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$200,000.
3. For any defendant found at least 25 percent but not more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$500,000.
4. For any defendant found more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$1 million.

For any defendant under subparagraph 2., subparagraph 3., or subparagraph 4., the amount of economic damages calculated under joint and several liability shall be in addition to the amount of economic and noneconomic damages already apportioned to that defendant based on that defendant's percentage of fault.

(b) Where a plaintiff is found to be without fault, the following shall apply:

1. Any defendant found less than 10 percent at fault shall not be subject to joint and several liability.
2. For any defendant found at least 10 percent but less than 25 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$500,000.
3. For any defendant found at least 25 percent but not more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$1 million.
4. For any defendant found more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$2 million.

For any defendant under subparagraph 2., subparagraph 3., or subparagraph 4., the amount of economic damages calculated under joint and several liability shall be in addition to the amount of economic and noneconomic damages already apportioned to that defendant based on that defendant's percentage of fault.

Paragraph (a) does not apply because the plaintiff is assumed to have no fault. The law is coded as 1 (one), a repeal of joint and several liability where defendants are only liable for damages in proportion to their fault.

4. Georgia: $jsled = jslned = 0$ from July 1987 through December 2005. The 1987 law change states that when a plaintiff is found to be partially at fault, the court may elect to waive joint and several liability. Because the plaintiff is assumed to never be at fault, the law is coded as 0 (zero).
5. Louisiana: $jsled = 1, jslned = 1$ from July 1987 through December 2005. The 1987 joint and several liability reform applies joint and several liability only to the extent that the plaintiff receives 50% of the awarded damages. For medical malpractice cases, this is interpreted as functioning as a complete repeal of joint and several liability. In 1996, a new law took effect completely barring joint and several liability in the recovery of all damages, even if it means that plaintiff recovers less than 50% of the awarded damages.
6. Michigan: $jsled = jslned = 0$ from April 1996 through December 2005. The 1996 law change to an existing joint and several liability reform bars joint and several liability in all tort suits except for medical malpractice suits, unless the plaintiff in the medical malpractice suit is found to have fault. Joint and several liability is barred in medical malpractice cases if the plaintiff is found to have fault, but not otherwise. The law is coded as 0 (zero) because of the no plaintiff fault assumption.
7. Minnesota: $jsled = jslned = 0.15$ from 1988 through July 2003. The 1988 law change retains joint and several liability for defendants with greater than 15%

fault. For those with 15% or less fault, they are liable for no more than four times their proportion of damages. The law is coded as 0.15. On August 1, 2003 a new statute was passed providing that joint and several liability only applies to defendants found to be more than 50% at fault.

8. Mississippi

- a) `jsled = jslned = 1` from July 1989 through December 2002. The 1989 law change applies joint and several liability only to the extent that the plaintiff receives 50% of awarded damages. For medical malpractice cases, this is interpreted as functioning as a complete repeal of joint and several liability. The law is coded as 1 (one).
- b) `jsled = 1` and `jslned = 1` from January 2003 through August 2004. The 2003 law change bars joint and several liability for noneconomic damages. For economic damages, tortfeasors whose fault is determined to be less than 30% are found to be severally liable only, and for those whose fault is determined to be 30% or more, liability "shall be joint and several only to the extent necessary" for the injured party to recover 50% of his recoverable damages. To be consistent with how we coded the `jsl` variables in Mississippi before the 2003 reform, when a similar provision was also made about injured parties recovering 50% of the damages, `jslned` is entered as a 1 (one), a full repeal of JSL, when this statute is in effect. It is readily apparent that the 2003 law change decreases the availability of joint and several liability to plaintiffs in Mississippi.

c) jsled = jslned = 1 from September 2004 through December 2005 as the September 1, 2004 law change bars joint and several liability altogether.

9. Missouri: jsled = jslned = 1 from February 1986 through December 2005.

The 1986 law change makes defendants in health care actions jointly and severally liable for only those defendants who are apportioned less fault. The law is coded as 1 (one).

10. Nebraska: jsled = jslned=0 from January 1985 through December 2005.

There is a Nebraska statute, effective February 7, 1992, repealing jsl for NED in actions in which the comparative negligence of the plaintiff may be asserted as a defense. However, it is not applied in medical malpractice cases in which the comparative negligence of the plaintiff is not an issue. In *Gourley ex rel.*

Gourley v. Nebraska Methodist Health System, Inc., 663 N.W.2d 43, 47+, 265 Neb. 918, 918+ (Neb. May 16, 2003) (NO. S-00-679), an OB/GYN and a hospital are found jointly and severally liable for both economic and noneconomic damages for a childbirth that occurred in 1993. This is a case decided by the Supreme Court of Nebraska. Further details about the case are given in the Excel spreadsheets.

11. New Mexico: jsled = jslned = 1 from January 1985 through December 2005.

The statute enacted July 1, 1987 merely codifies the preexisting state common law rule barring joint and several liability in the state's pure comparative negligence system. The common law bars application of joint and several liability regardless of whether the plaintiff is found to be partially at fault or not.

12. Ohio

a) $jsled = jslned = 0$ from January 1985 through December 1987. The pre-1985 law states bars joint and several liability when the plaintiff has some fault. The law is coded as 0 (zero) because of the no plaintiff fault assumption.

b) $jsled = jslned = 0$ from January 1988 through January 1997. The 1988 law change bars joint and several liability in the recovery of noneconomic damages when the plaintiff has some fault. The law is coded as 0 (zero) under $jslned$ because of the no plaintiff fault assumption. On January 27, 1997 a statute was enacted partially repealing JSL in all tort suits regardless of whether the plaintiff is blame-free.

13. Oklahoma. $jsled=jslned=0$ from November 2004 through December 2005. The statute effective November 1, 2004, that repeals JSL for defendants less than 50% to blame, only applies when the plaintiff is also found to have some fault. The law is coded as 0 (zero) because of the no plaintiff fault assumption.

14. Oregon: $jsled = jslned = 1$ from August 1995 through December 2004. The July 19, 1995 law change bars joint and several liability. However, the plaintiff may make a motion to reallocate an uncollectible portion of award. It is then at the court's discretion whether to reallocate any part of the award. The law is coded as 1 (one). The liability insurers of doctors and hospitals are able and typically obliged to pay the full amount of a medical malpractice award.

15. South Dakota: $jsled = jslned = 0.5$ from April 1987 through December 2005. The March 17, 1987 law change states that defendants found to be less than 50%

at fault can be found liable for up to twice their proportion of damages. The law is coded as 0.5.

16. Texas: $jsled = jslned = 0.1$ from September 1987 through August 1995. The 1987 law change states that when a plaintiff is found to have fault, joint and several liability does not apply to defendants with less than 20% fault and that when a plaintiff is not at fault, joint and several liability does not apply to defendants with less than 10% fault. Assuming no plaintiff fault, the law is coded as 0.1. In September 1995 a new JSL reform took effect.

17. Vermont: $jsled = jslned = 0$ from January 1985 through December 2005. The pre-1985 statute bars joint and several liability when the plaintiff has some fault. The law is coded as 0 (zero) because of the no plaintiff fault assumption.

18. Washington: $jsled = jslned = 0$ from January 1985 through December 2005. The August 1, 1986 law change bars joint and several liability when the plaintiff has some fault. The law is coded as 0 (zero) because of the no plaintiff fault assumption.

VI. Collateral Source Rule

A. Variables

1. csr : This represents the collateral source rule that the state follows for payments made by private sources of health insurance (insurance purchased directly by the newborn's family or provided for by the family's employer).
2. $csrp$: This represents the collateral source rule that the state follows for payments made by public (government-provided) sources of health insurance.

There are several states that have collateral source rule reforms that do not apply to private sources of health insurance. These reforms make explicit exceptions that disallow evidence of collateral source payments made by private health insurers to be admitted at trial and that do not allow for awards to be offset by these payments. Similarly, there are numerous states that have collateral source reforms that do not apply to public sources of health insurance, or that do not apply to collateral sources that have subrogation rights. Subrogation rights allow the collateral source to have its payments to the plaintiff paid back by the plaintiff with the money the plaintiff receives from the defendant(s) for damages. In 1977, federal law gave Medicaid subrogation rights that it could use at its discretion, and by federal law dating from 1984, Medicaid must exercise these rights.

See 42 U.S.C.A. § 2651 and 42 U.S.C.A. § 1396a. See, also, *New York State Dept. of Social Services v. Bowen*, C.A.2 (N.Y.) 1988, 846 F.2d 129 (“Medicaid statute mandated that state agency seek reimbursement from third parties liable for care and services paid for by Medicaid when reimbursable amount exceeds costs of such recovery.”)

B. Coding: 0 (zero) represents that the state follows the traditional common law collateral source rule (disallowing evidence of collateral source payments and disallowing awards to be offset by such payments). 1 (one) represents that the state has repealed the collateral source rule by allowing evidence of collateral source payments and/or allowing damage awards to be offset by the amount of collateral source payments. csr is equal to one when a state has repealed the collateral source rule for private or both private and public collateral source payments, and is zero otherwise. csrp is equal to one when a state has repealed the collateral source rule for public or both private and public collateral source payments, and is zero otherwise. When a state’s statute repealing the

common law collateral source rule makes an exception in which the repeal does not apply to collateral sources that have subrogation rights, the csrp variable is coded as a 0, as Medicaid has had subrogation rights since 1977.

C. State Variations:

1. Alaska: $csr = 1$ and $csrp = 0$ from January 1985 through December 2005. The pre-1985 law was to allow evidence of collateral source payments only in medical malpractice actions. A 1986 law change extended the repeal of the collateral source rule to all civil cases. Both the pre-1985 law and the 1986 law change did not apply the repeal to federal programs that must, by law, seek subrogation, such as Medicaid.
2. Arizona: $csr = csrp = 1$ from January 1985 through December 2005. The pre-1985 law was to allow evidence of collateral source payments only in medical malpractice actions. A 1993 law change extended the repeal of the collateral source rule to all personal injury cases.
3. Colorado: $csr = 0$, $csrp = 1$ from July 1986 through December 2005. The 1988 law change merely required plaintiffs in personal injury actions against a health care provider for professional negligence to serve notice to collateral source payers. The 1986 statute did not apply the repeal to collateral sources paid for by or on behalf of the plaintiff.
4. Connecticut: $csr = 1$, $csrp = 0$ from October 1985 through December 2005. The 1985 law change repealed the collateral source rule for medical liability cases. A 1987 law change extended the repeal to all cases. The repeal was not applied to collateral sources which have subrogation rights, such as Medicaid.

5. Delaware: $csr = 0, csrp=1$ from January 1985 through December 2005. The original law, from 1976, makes evidence of public collateral source payments admissible in medical negligence actions. However, evidence of payments from life insurance or private collateral sources of compensation or benefits is not admissible.
6. Hawaii: $csr = csrp = 0$ from January 1985 through December 2005. The reform effective August 4, 1986 provided for payment of valid liens (arising out of claims for payments made from collateral sources for costs and expenses arising from an injury) from special (i.e., economic) damages recovered. It prevented double recoveries by allowing subrogation liens by insurance companies or other sources. This reform does not affect the amount of damages paid by the defendant to the plaintiff.
7. Illinois: $csr = csrp = 1$ from January 1985 through December 2005. Prior to the August 15, 1985 law change, the collateral source statute in Illinois only provided for awards to be offset as long as the offset did not reduce the judgment by more than 50%. Effective August 15, 1985 they may be reduced by 100%. The law is coded as 1 (one) during the whole time period.
8. Indiana: $csr = csrp = 0$ from September 1986 through December 2005. The September 1, 1986 law change allows evidence of collateral source payments, with the exceptions of privately acquired sources of insurance and federal and state government benefits, evidence of which is not allowed.
9. Kansas: $csr = csrp = 1$ from July 1988 through April 1993. The July 1, 1988 law change, ruled unconstitutional on April 16, 1993, permitted the admissibility

of evidence of collateral source payments, where damages claimed for exceed \$150,000. As medical malpractice awards can easily exceed this amount the law is coded as a 1 (one) in the data when the statute is in effect.

10. Michigan: $csr = 1$, $csrp = 0$ from October 1986 through December 2005. The 1986 law change permits courts to offset awards, as long as the plaintiff's damages are not reduced by more than the amount awarded for economic damages. This still allows for substantial offsets in medical malpractice cases, so the law is coded as a 1 (one) when the statute is in effect. In addition, collateral sources rarely if ever provide compensation for noneconomic damages. The 1986 statute does not permit offsets for payments from collateral sources which have subrogation rights, such as Medicaid.

11. Montana: $csr = 1$, $csrp=0$ from October 1987 through December 2005. The October 1, 1987 law change permits the admissibility of evidence of collateral source payments and requires the court to offset damages over \$50,000. Statutes that allow admissibility alone are coded as 1 (one), hence this statute is also coded as a one. The csr reform does not apply when the source of reimbursement has a subrogation right under state or federal law, and Medicaid has a subrogation right by federal law.

12. New Jersey: $csr = csrp = 1$ from January 1988 through December 2005. The December 18, 1987 law change provides for awards to be offset by collateral source payments other than worker's compensation and life insurance benefits. These exceptions are unlikely to apply in medical malpractice cases concerning childbirth.

13. New York: $csr = 1$, $csrp = 0$ from January 1985 through December 2005.

The pre-1985 law repealed the collateral source rule only for medical malpractice cases. A 1986 law change extended the repeal to all cases. The repeals do not apply to collateral sources which have subrogation rights, such as Medicaid.

14. North Dakota: $csr = csrp = 0$ from August 1987 through December 2005.

The August 1987 law change provides for awards to be offset by collateral source payments other than life insurance, insurance purchased by or on behalf of the recovering party, or insurance with subrogation rights (such as Medicaid).

Therefore, the reform does not apply to either private or public health insurance.

15. Ohio:

a) $csr = 0$ from January 1985 through March 2003. The 1988 collateral source rule reform in Ohio does not apply to medical malpractice cases. Collateral source payments in medical malpractice suits in Ohio were governed by their own statute specific to malpractice, dating from 1976, until this statute was repealed and replaced by a statute repealing the common law collateral source rule and allowing evidence of collateral source payments in all tort actions, including medical malpractice, on January 27, 1997. The 1976 statute (revived from February 25, 1998 through April 10, 2003) only allowed awards to be reduced by payments made by collateral source providers that are not insurance policies purchased by the injured party, her employer, or both. Payments made by these private sources of insurance may not be deducted from awards in medical malpractice cases. As the 1976 law does not apply to payments

from private sources, csr is coded as a 0 in the data (common law collateral source rule) when the statute is in effect. The csr reform in effect from February 1997 through February 1998 also makes an exception for insurance for which the plaintiff or her family member has paid a premium, and csr is coded as a 0 in this period as well.

b) csrp = 1 from January 1985 through January 1997 and from March 1998 through March 2003, csrp = 0 outside of these time intervals.

January 1985 through January 1997 and March 1998 through March 2003 are the only time periods in which a statute allowing evidence of payments from public collateral sources is in effect.

c) csr = 1, csrp = 0 from April 2003 through December 2005. The April 11, 2003 repeal of the collateral source rule applies only to medical liability cases. The repeal does provide for awards to be offset by payments from private health insurance, although it does not allow offsets for payments made by sources with a “mandatory self-effecting federal right of subrogation or a contractual or statutory right of subrogation” such as Medicaid, and does not allow evidence of such payments to be introduced at trial either. The 2005 law change extends the repeal to all cases.

16. Oregon: csr = csrp = 0 from January 1985 through December 2005. The collateral source repeal that occurred on July 17, 1987 does not apply to insurance benefits for which the plaintiff has paid premiums and collateral sources with

subrogation rights, such as Medicaid. Hence, Oregon is coded as following the common law collateral source rule when the statute is in effect.

17. Washington: csr=0, csrp=1 from January 1985 through December 2005. The original law, from 1975 and specific to medical malpractice actions, makes evidence of collateral source payments admissible, except for payments made by private health insurers (where the insurance is paid for directly by the plaintiff or provided by her family's employer).

Here is the full list of states that have collateral source reforms that apply to either only public or only private sources of collateral benefits.

The states that have collateral source reforms applying only to public sources are: Colorado (reform made in 1988), Delaware (reform made in 1976), Ohio (reform made in 1976, repealed in February 1997, reinstated in March 1998, repealed again in April 2003), Washington (reform made in 1975).

The following states have collateral source reforms that apply only to private sources of health insurance. In all of these states, the reason why the reform does not apply to public health insurance is because the reform does not apply to collateral sources with subrogation rights, and Medicaid has subrogation rights. Alaska (reform made in 1976), Connecticut (reform made in 1985), Florida (1976), Idaho (1990), Massachusetts (1986), Michigan (1986), Minnesota (1986), Montana (1987), Nebraska (1976), Nevada (1975), New York (1984), Oklahoma (2003), Pennsylvania (2002), and Utah (1985).