



Health Care Legal Reform Needed Now

Congress Should Pass Legislation that Significantly Reforms the Medical Malpractice Litigation System

Issue: Excessive litigation and the defensive medicine it encourages have contributed significantly to skyrocketing health care costs, threatened access to care in several parts of the country, and hindered efforts to improve quality.

The Patient Protection and Affordable Care Act (Affordable Care Act) authorizes grants to States to test alternatives to civil tort litigation, recommended by a 9-person panel appointed by the Government Accountability Office (GAO) of patient advocates, health care providers, attorneys with expertise representing patients and providers, medical malpractice insurers, state officials and patient safety experts.

Position: The National Business Group on Health, representing approximately 300 large employers who provide coverage for 55 million Americans, believes that Congress should enact legislation to reform the health care legal system to protect access to affordable, quality health care. Such reform would place reasonable limits on damage awards and would curb excessive and frivolous litigation.

The National Business Group on Health supports the following principles for health care legal reform:

- Capping of non-economic damages in malpractice lawsuits which can total up to \$750,000 for multiple health care institutions and \$250,000 for individual health care providers;
- Setting a statute of limitations of 3 years after the date of manifestation of injury or 1 year after the claimant discovers the injury, with certain exceptions. This will ensure that fair, just and equitable compensation is appropriately awarded to patients deemed injured;
- Restricting the payment of attorney contingency fees. Limiting the fees to a decreasing percentage based on the increasing value of the amount awarded;
- Requiring jurisdiction of health care litigation to be presided over by Federal Courts; and
- Strengthening the criteria for the expert witness rule to ensure accurate medical opinions and information.

Skyrocketing Malpractice Insurance Rates Are Threatening the Availability of and Access to Health Care Services and Coverage

- Increasing numbers of physicians, hospitals, and other providers are curtailing their services, particularly Ob/Gyns and emergency care, relocating to other states; or ceasing to practice altogether.

Excessive Litigation and Defensive Medicine Drive Up Health Care Costs

- According to the most recent study by Mello, et. al (2010), the overall cost of defensive medicine in 2008 was \$45.6 billion. The study also states that the federal government could reduce \$38.8 billion of this spending through direct tort reforms.
- A landmark study by Daniel P. Kessler and Mark B. McClellan estimated that 5% to 9% of health care spending is due to defensive medicine.
- According to an April 2008 PricewaterhouseCoopers' Health Research Institute study, defensive medicine accounts for \$210 billion annually in wasteful health care spending.

Higher Health Care Costs of Unreformed Legal System Add to the Uninsured

- In 2005, the Kaiser Family Foundation estimated that higher health care expenditures because of liability concerns raised the number of uninsured by 3.4 million.

The Current Legal Environment Encourages Defensive Medicine, Hiding of Medical Errors, and Works against Quality Enhancement

- Overuse of medicine—subjecting patients to unnecessary tests and treatments is common. For example, a 1997 study of deliveries in New York State, partly funded by AHCPH (now the AHRQ), concluded that one-fourth of caesarian sections were due to fear of malpractice suits. A Stanford University study several years ago found that defensive medicine raises risks for patients subject to unnecessary care.
- Fear of malpractice litigation also encourages physicians and other health professionals and facilities to keep silent about medical errors because they fear the information would be used in court.

States that have Enacted Laws Limiting Malpractice Damage Awards Have Reduced Health Care Expenditures

- In 2003, the GAO reported average premiums for three physician specialties—general surgery, internal medicine, and obstetrics/gynecology—grew more slowly, by about 10 percent, in states with caps on noneconomic damages of \$250,000, compared to about 29 percent in states with limited reforms.
- An Agency for Healthcare Research and Quality (AHRQ) report in 2006 found that states with tort reform laws had average per capita health expenditure levels that were 3.4% lower than those in states without such laws.