

Shaping the Future for a Healthier America

Medical Liability Reform

Background

Hospitals and physicians face skyrocketing costs for professional liability insurance. Unaffordable insurance is affecting access to care as physicians leave states with high insurance costs or stop providing services that expose them to higher risks of lawsuits. Particular areas of concern include obstetrics, neurosurgery and emergency services. In addition to the rising costs of insurance, physicians also practice “defensive medicine” – the practice of providing extra care to minimize the risk of lawsuits. Fear of liability also can become a substantial barrier to many quality improvement initiatives. And patients who are seriously harmed often wait too long for compensation – a direct result of our misguided medical liability system.

The Institute of Medicine (IOM) supports medical liability reform, suggesting a shift to a system that is patient-centered and safety-focused. *The Patient Protection and Affordable Care Act of 2010* (PPACA) appropriated \$50 million for demonstration projects that test models aimed at reducing frivolous lawsuits and liability premiums. The Secretary of Health and Human Services will evaluate the projects and submit reports to Congress.

AHA View

Reforming our nation’s current liability system is an essential part of the AHA’s *Health for Life* framework, which the hospital field embraced as our shared vision for health care reform. Further, medical liability reform can help make health care more affordable and efficient. In fact, the Congressional Budget Office in an October 2009 letter to Sen. Orrin Hatch (R-UT) estimated that medical liability reform would reduce federal mandatory spending on health programs by \$41 billion over 10 years. While the PPACA includes medical liability reform pilot programs, more meaningful reform is necessary. The AHA advocates for a more sensible liability system that uses evidence-based standards, separates the serious cases from others, and produces prompt and fair compensation for injured patients.

Medical liability reform would benefit patients and providers in the following ways:

- *Quality and patient safety improvements* – Providers would have additional incentive to adhere to clinical protocols and evidence-based care; the focus would be quality and safety, not defensive medicine.
- *Broader access to compensation* – The system would reach all eligible patients, not just a few; the amounts would be more consistent across similar cases, and awards would be reasonably predictable for patients; both the process and compensation would be faster.
- *Reasonable compensation* – Patients would be made “whole” for the economic and non-economic costs of injuries.

- *A more efficient system* – The claims process for patients would be simpler and less adversarial; compensation would be delivered with lower transaction costs; liability insurance would become more affordable.

The AHA and others, including the IOM, support a system in which decisions on compensation are made by trained, impartial adjudicators outside the regular tort system, based on whether injury was avoidable. These adjudicators would review the care provided and, if warranted, award compensation based on specific guidelines.

Specifically, an administrative compensation system (ACS) would compensate patients for injuries that could have been avoided during medical care. Decisions made using nationally developed, evidence-based clinical guidelines and schedules for compensation amounts would be part of a comprehensive approach to address injuries sustained during care. Robust regulatory and oversight activities would complement the system to protect patients from individual practitioners who might place their safety at risk. Additionally, an ACS would:

- Handle claims for injury during medical care through an administrative process administered by the states. Intentional injuries and criminal acts would remain in the courts, outside of this system.
- Provide compensation for injuries that could have been avoided and that meet a minimum threshold of harm. The standard would be whether the injury was avoidable; the negligence standard would not apply.
- Encourage patients who believe they have been injured during medical care to submit a claim to a local panel that, using explicit, nationally established decision guidelines and schedules, would make an initial decision about whether an injury was eligible for compensation and, if so, offer compensation. Hospitals, physicians and other providers could take the initiative before a claim is filed and offer compensation using the guidelines and schedules.

Under this revamped system, patients who question the local panel's decision could bring their claims to an expert panel or administrative law judge who is part of a state system. Patients could ultimately seek review of the decision in court. An ACS would provide prompt compensation to injured patients and families based on agreed-upon payment schedules when an avoidable, preventable error takes place.

Reforming the medical liability system could reduce overall administrative and legal costs and redirect providers' attention and resources to patient care. An alternative liability system could provide fair compensation to injured patients while deterring unnecessary care and unsafe practices and systems. It also would create a legal environment that fosters high-quality patient care.