

Medical Liability Reform

Background

The high costs associated with the current medical liability system not only harm hospitals and physicians, but also patients and communities. Across the nation, access to health care is being negatively impacted as physicians move from states with high medical liability insurance costs or stop providing services that may expose them to a greater risk of litigation. The increased costs that result from our flawed medical liability system not only hinder access to affordable health care, they also threaten the stability of the hospital field.

But there is momentum for change. *The Patient Protection and Affordable Care Act (ACA)* provided \$50 million for demonstration projects to test models aimed at reducing frivolous lawsuits and liability payments. The Secretary of Health and Human Services will evaluate the projects and submit reports to Congress. In addition, President Obama indicated in his State of the Union address that he is willing to consider liability reform as a way to reduce health care costs.

AHA View

While the ACA includes medical liability reform pilot programs, more meaningful reform is necessary. The AHA supports 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. **Specifically, the AHA seeks to:**

- **Cap non-economic damages;**
- **Allow the courts to limit lawyers' contingency fees;**
- **Model federal proposals on proven state models of reform;**
- **Make each party liable only for the amount of damages directly proportional to its responsibility; and**
- **Enact a reasonable statute of limitations after the date of the manifestation, or discovery, of an injury.**

Several bills have been introduced in Congress, primarily in the House of Representatives, that would help curb skyrocketing medical liability costs. Thus far, the most comprehensive bill is the *Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act* (H.R. 5/S. 218) – the only bill to also be introduced in the Senate. The bill was introduced by Reps. Phil Gingrey (R-GA), Lamar Smith (R-TX) and David Scott (D-GA), and Sen. John Ensign (R-NV), respectively. The legislation is modeled after reform enacted in California during the 1970s. **The AHA supports the HEALTH Act**, which would cap compensation for pain, suffering and emotional distress – non-economic damages – at \$250,000. Among other provisions, the bill would:

- Cap punitive damages at \$250,000 or two times the award for economic damages, whichever is greater;
- Replace “joint-and-several” liability, which makes any defendant in a suit liable for all the damages, with a fair-share rule that sets damages for defendants in proportion to their share of responsibility for the injury;
- Allow defendants to inform juries of workers’ compensation payments and other outside benefits for injured parties that could be subtracted from jury awards;
- Set the statute of limitations for filing a liability suit at a maximum of three years, with more lenient terms for injured children younger than age six; and
- Limit the amount of a jury verdict that plaintiffs’ attorneys can receive in the form of contingency fees.

Other bills that have been introduced this Congress include:

- *The Health Care Safety Net Enhancement Act of 2011* (H.R. 157), introduced by Rep. Pete Sessions (R-TX).
- *The Medical Liability Procedural Reform Act of 2011* (H.R. 314), introduced by Rep. Mac Thornberry (R-TX);
- *The Provider Shield Act of 2011* (H.R. 816), introduced by Rep. Gingrey;
- *The Medical Justice Act of 2011* (H.R. 896), introduced by Rep. Michael Burgess (R-TX); and
- *The Medical Care Access Protection Act of 2011* (S.197), introduced by Sen. Ensign.

The AHA also developed a proposed framework for creating an alternative to the current liability system to compensate patients for injuries that occurred and could have been avoided during medical care. Decisions would be made through an administrative compensation system using nationally developed evidence-based clinical guidelines and schedules for compensation amounts. Robust regulatory and oversight activities would complement the system to protect patients from individual practitioners who may place their safety at risk. The framework can be viewed at www.aha.org under “Medical Liability Reform.”