



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 out of 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 raise health care premiums and costs for everyone.

AHA View

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 Rep. Phil Gingrey (R-GA), and Sens. Mark Kirk (R-IL) and Roy Blunt (R-MO), 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;
- 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 and supported by the AHA include:

- *The Good Samaritan Health Professionals Act of 2011* (H.R. 3586), introduced by Reps. Cliff Stearns (R-FL) and Jim Matheson (D-UT), would extend medical liability protections to licensed health care professionals who cross state lines to serve as volunteers in a federally declared emergency.
- The Dent–Sessions amendment to the *Protecting Access to Health Care Act* (H.R.5), introduced by Reps. Charles Dent (R-PA) and Pete Sessions (R-TX), would extend liability coverage in certain circumstances to hospitals and on-call and emergency physicians through the *Federal Tort Claims Act*. Specifically, the amendment would ensure medical services furnished by a hospital, emergency department, or physician that were pursuant to the *Emergency Medical Treatment and Labor Act* (EMTALA) and related stabilization services receive the same liability coverage currently extended to employees of community health centers and health professionals who provide Medicaid services at free clinics.